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IN THE

Supreme Court of the United States

October Term, 1969

No. 512

LEIGH T. BOWIE, et al.,
Petitioners,

v.

BOARD OF COUNTY COMMISSIONERS OF HOWARD COUNTY, et al.,
Respondents.

Petition for a Writ of Certiorari to the Court of Appeals of Maryland

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Petition for a Writ of Certiorari to the Court of Appeals of Maryland

Leigh T. Bowie and Ella Mae Bowie, his wife, and Charles C. Deist and Winifred V. Deist, his wife, and Leo M. McMullen and LaRue V. McMullen, his wife, pray that a Writ of Certiorari issue to review the Judgment of the Court of Appeals of Maryland, entered in this case on May 27, 1969.

Citation to Opinions Below

The Opinion of the Court of Appeals of Maryland is reported in 253 Md. 602, 253 A.2d 727, and is printed in the Appendix, (Apx.) *infra.*, p. 1, the Opinion of the Circuit Court of Howard County is printed in the Appendix, *infra.*, p. 18, and the Opinions of the Board of County Commissioners of Howard County, Maryland are printed at Apx. 75 and 40.

Jurisdiction

The jurisdiction of this Court is invoked under 28 U. S. C. Sec. 1257 (3) since the validity of a State Statute is drawn in question on the ground of its being repugnant to the Constitution of the United States and rights, privileges and immunities are claimed under the Constitution of the United States.

Questions Presented

1. Where detailed zoning regulations promulgated by respondent Board of County Commissioners require them, before re-zoning, to make certain findings and conclusions upon petition and hearing, and the Board by special regulation, grants the re-zoning after hearing, without making the required findings and conclusions, and the reviewing Court supplies the omitted findings and conclusions to uphold the Board's Order and affirms without remand to the Board, have the protesting landowners (Petitioners) been deprived of due process of law or equal protection of the laws within the meaning of the 14th Amendment of the Constitution, by such denial of remand?

2. Where the reviewing Court affirms the refusal of the Board to grant protestors (petitioners) a continuance on the stated ground that three days after the hearing a zoning

moratorium is to go in effect and the Board to dissolve and the reviewing Court affirms such denial on the erroneous conclusion that lawful statutory notice was given, were petitioners' rights to procedural due process under the 14th Amendment violated?

3. Where the reviewing Court presumes the Board's Order valid, is its offer to hear evidence while the moratorium is in effect and the Board dissolved, a constitutionally valid substitute for a hearing at the initial Board level?

4. In the circumstances of this case, do the denials of continuance, hearings held without regular statutory notice and unusually speedy decision-making by the Board, Circuit Court and the Court of Appeals of Maryland amount to fundamental unfairness and a denial of Petitioners' 14th Amendment Rights?

Statement of the Case I

A. Procedure

Petitioners ("protestants" below) are property owners living in the Sixth Election District of Howard County, Maryland who opposed the re-zoning of a neighboring 1,087 acre tract before the respondent former Board of Howard County Commissioners. The re-zoning was petitioned before the Commissioners, by the corporate respondents here (Rouse) for the use and benefit of the General Electric Company (G.E.).

The Commissioner's re-zoning Order of November 4, 1968 was appealed by petitioners' Order of Appeal (R.C.C.* 2-3) and a Bill of Complaint in Equity in the Circuit Court for Howard County to declare the Order illegal, unconstitutional and void and to enjoin and restrain the County

*"R.C.C." refers to the Circuit Court record which is paged separately.

Commissioners from amending the Zoning Map of Howard County so as to rezone the property in question, (Apx. 35) From the Decree of January 31, 1968 of the Circuit Court dismissing the Bill of Complaint (Decree and Opinion, Apx. 18, 38) a further appeal was entered to the Court of Appeals of Maryland, which advanced the case on Rouse's Motion (See Apx. 81-84) and by its Opinion of May 27, 1969 (Apx. 1) affirmed the Judgment below. This Petition follows.

Statement of the Case II

A. The Board's Regulation and Order operating to exempt petitioners Rouse from proof of "mistake" or "change" as a basis for re-zoning and from its Rules requiring such proof.

B. The intermediate appellate Court concludes that proof of mistake or change is required to support the Regulation and the Board's Order and finds mistake-change judicially, without remand to the Board.

Before the instant re-zoning petitions were filed, the Board of County Commissioners had adopted a master or comprehensive zoning plan pursuant to zoning powers delegated to the Board of County Commissioners by the Maryland Legislature through a Public Local Law. Article 14, Code of Public Laws of Maryland, Sections 343-347 (Apx. 85).

The Commissioners had adopted a General Plan for Howard County (R.C.C. 79) and enacted a Comprehensive Zoning Map (R.C.C. 79, R 51, p. 46, Apx. 89). More important for the purposes of this Petition for Certiorari, pursuant to the same Public Local Law, The Board had promulgated and published detailed procedural regulations (Apx. 93-98) codifying the Maryland common law of zoning with respect to re-zoning or amending the Comprehensive

Zoning Map, i.e., that the strong presumption of validity of original zoning pursuant to a Comprehensive Plan or Map, can be overcome only on a showing by re-zoning petitioners of mistake in the original comprehensive zoning or a substantial change in the neighborhood of the property sought to be re-zoned. (Zoning Regulations Section 33, 33.01, .014, .015, .0110, .03, .034; Apx. 93-98).

Rouse filed its initial Petition in Case No. 506, on September 18, 1968, to exempt itself from the mistake-change requirement by having the Board promulgate a new Regulation 14 A-ID (Industrial Development) (Apx. 40-43, 44), pursuant to the so-called "floating zone" exception to the mistake-change Rule. (E.* 262, 263, Apx. 57, Paragraph 9.)(R.C.C. Transcript, Case 506, p. 148, 149)

After the Board promulgated 14-A, it conducted its Hearing on the Rouse Petition under 14-A; (Apx. 55) in Case No. 511, and pursuant to the State Administrative Procedure Act. (Apx. 71, 72) Protesting petitioners there contested at the Hearing. Three days later, the Board handed down its Opinion containing the detailed findings of fact and conclusions of law required by Regulation 14-A, and its Order granting the re-zoning (Apx. 76, 78). Regulation 14-A provides that Appeals from Orders thereon shall be made in accordance with the Maryland Rules providing for Appeals from administrative agencies (14A.714 Apx. 53). An Appeal was so noted (R.C.C. 2-3).

As both Courts below found, (Apx. 9), Regulation 14-A as embodied in the Board's Order did not satisfy the Maryland Law, as to Amendment of Comprehensive Zoning Maps, because the conditions for establishing a valid "floating zone" were not imposed in Regulation 14-A, or the Board's Order (Apx. 10). However, the Circuit Court, at the initial

*"E." refers to the Joint Record Extract, to be found in the Record of the Maryland Court of Appeals, R. 50.

appellate stage, in order to sustain the Board's Order, proceeded, itself, to make the necessary findings of fact and conclusions of law as to mistake-change, in some instances by Judicial or rather official notice.[1]

The Board had never considered mistake-change. Rouse's lawyer said it didn't have to (E. 262, 263, R.C.C., T. 148 & 149, Hearing 506.) Rouse's Petition had expressly disclaimed pleading and proof of mistake-change (Apx. 57 paragraph 9). Regulation 14-A required detailed fact findings, (Apx. 43), but did not require such proof; and the Board's Opinion and Order with its detailed findings of fact and conclusions of law under 14-A contained none, on these issues (Apx. 78, 79). The Court's stated ground for supplying these findings and conclusions at the intermediate appellate stage and the Maryland Court of Appeals' reasons for affirming the lower Court are stated, as follows by the Maryland Court of Appeals:

> "The Chancellor went on to agree with complainants (Appellants) that the re-classification of the property to ID did not create a floating zone and "that mistake or change is the proper test to be applied." (Apx. 11)
>
> "Appellants contend that "since mistake-change was not even considered, let alone 'debated,' 'fairly' or otherwise by the zoning board, it was an unconstitutional usurpation of legislative power for the lower Court to substitute its judgment for the zoning board's and attempt to apply judicial expertise to an area of expertise reserved by constitutional law for the County Commissioners." The same contention

[1] By the same process, the Maryland Court of Appeals in its Opinion, in its turn, proceeded to buttress the Board and supplement the lower Court's findings and conclusions on change in the neighborhood. (Apx. 5)

was made before Judge Macgill who disposed of it in the paragraph of his opinion which follows:

> "As it has been observed, the Board, in arriving at its conclusion, made no findings on the evidence before it as to change or mistake but acted on the theory of law that the I-D district was a floating zone. It is stated as a principle of law, however, that: 'The reviewing court has the right to consider grounds justifying the decision below, although the decision was not rested on such grounds and regardless of the fact that the theory advanced below is erroneous.' 2 Am. Jur. 2d 'Administrative Law,' Section 756, citing *Moore v. Clarke*, 171 Md. 39, and *Union Light, Heat and Power Co. v. Public Service Commission*, (Ky.) 271 S.W. 2d 361."

"The authorities cited by Judge Macgill could be supplemented by our decisions in *Kirkman v. Montgomery County Council*, 251 Md. 273 (1968), *Clark v. Wolman*, 243 Md. 597 (1966), and *Serio v. Mayor & City Council*, 208 Md. 545 (1956), in which will be found solid support for the principle of law stated by him. In *Hoffman v. Mayor & City Council*, 187 Md. 593, 602 (1947), it was said:

"In *Heaps v. Cobb*, 185 Md. 374, 45 A.2d 73, there was no evidence in the case to support the finding of the Board of Trustees, but in this case there is evidence to support the finding of the Board of Zoning Appeals. It is true that the reason set out in the resolution of the Zoning Board for refusing to grant this permit is not based on the reason pointed out in this opinion. Without deciding the question of whether the reason given by the Board is correct or not, it is none the less true that if its conclusion was correct it will not be set aside, even if the reason given therefore is wrong."

Finally The Court of Appeals said:

> "We think there was quite enough evidence, virtually all of it undisputed, before the Commissioners to make the issues of change and mistake fairly debatable, even though they may not have been debated, fairly or otherwise, and we see no need to expand this opinion by discussing it further." (Apx. 14)

Although the lower Court, in effect, found Regulation 14-A insufficient to support the Board Order, (The Lower Court sustained the Order only by finding mistake-change, itself, *supra*), The Maryland Court of Appeals refused to consider Petitioners' attack on the Regulation at the Court of Appeals on the ground that the question was not raised below. (Apx. 16, 17)

In addition, the Court of Appeals failed to rule on appellants' further contention that, as a matter of due process and equal protection, the lower Court was required to remand the case to the Board for further hearing because, the Board's own regulations requiring pleading, proof and consideration by the Board of mistake-change in every other re-zoning case, had been violated, and that observance of these Regulations by the Board and enforcement by the Court was required by the Fourteenth Amendment and by the state Administrative Procedure Act. (R. 51, (Main Brief), pp. 19-21, 30-32, R. 52A (Reply Brief), pp. 2-9)

Statement of the Case III

a. Chronology of Administrative decisions and orders just before a zoning moratorium and the end of the Board as then constituted.

b. Denial of petitioners' motions for continuance.

c. Circuit courts' criticism of haste in decisions.

e. Maryland Court of Appeals shortens time for briefs and argument.

In 1967, the Maryland Legislature forbade the three incumbent Commissioners (Respondents here) from taking final action on any zoning application after November 4, 1968, until a referendum to be held that day determined whether a new County Governing body prescribed by the proposed Charter would be installed. (Apx. 22, 87,88). The Board passed its final Re-zoning Order on November 4, after hearing held three days before. (Apx. 76, 80).

The Circuit Court commented on the hasty nature of the County Commissioners' action in granting rezoning, because of this moratorium, saying:

> "While the Board may have appeared to act with something more than 'deliberate speed'[2] it must be borne in mind that Section 344 (2) of the Public Local Laws of Howard County would have prohibited any final zoning action by that body from November 5, 1968 to January 28, 1969, when the new Charter Government was to go into effect." (Apx. 22)

(Two new members were to be added to the Board on January 28.) Appellants were criticized by the Maryland Court of Appeals for commenting adversely on the precipitate nature of the Board's Decision. (Opinion, Apx. 15). That Court found the Board's action "vigor(ous) and dash(ing)." However, the Circuit Court's own comment quoted above

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[2](The Circuit Court's footnote, follows:)

Note (2): This now popular expression was not the inspiration of the Supreme Court but was that of Francis Thompson in "The Hound of Heaven." (Apx. 33)

appears to have escaped the attention of the Court of Appeals of Maryland and it overruled appellants' attack based on hasty action, at *each stage of this case*, by the Board, as stated above, and because the Board denied Petitioner's motions for continuance (*infra*, p. 10) because the Board held its hearings on short notice (*infra*, p. 11) and, also, at the first appellate review stage, where the Circuit Court, regretting its *own* haste in deciding the matter four days after its hearing, stated in its Opinion:

> "This Court has been asked to give its decision on or before January 31st and it has agreed to do so, but it is regrettable that the consideration of a matter so complicated and of such importance should be limited to such a short period of time." (Apx. 19)

Finally, the Maryland Court of Appeals in the excercise of its discretion also advanced the case, allowing petitioners less time to file their main Brief than the minimum fixed by the Maryland Rules, 825 and 830 (Apx. 101), in the absence of special order. (Apx. 82-84)

Petitioners claimed denial of due process by The Court of Appeals, in failing to extend the time, at least to the usual minimum. *(Ibid)* Petitioner filed a Reply Brief several days before Argument on May 6, and the Appeals Court decided the case 21 days later.

At the hearing in Case No. 511 before the Board, the Petitioners' counsel specifically requested a continuance for the purpose of calling experts. (Apx. 67-69, 72-74).

The continuance was denied by the Board on the stated grounds that the zoning moratorium to which the lower Court's Opinion refers (Apx. 22) was about to go into effect and that the legal notice of 15 days required by the Statute (Apx. 76) had been given. (In fact, it had not.)

The Statute (344(2) Apx. 87) requires 15 days notice of hearing. The Regulation (33.0110, Apx. 96) requires the Commission to dismiss the petition if such notice is not given. The Hearing was held November 1 (Apx. 76) but the earliest notice was October 17 (Apx. 67), one day short under Maryland Rule 8 (Apx. 102) and the time Statute. *(Ibid.)*

In the Circuit Court, petitioners pleaded in their Bill of Complaint, that the Order of the County Commissioners was "illegal,unconstitutional, arbitrary, capricious, discriminatory and invalid and void," because *inter alia* "Petitioners were not allowed sufficient time to acquire expert testimony.". (Apx. 38)

The Circuit Court met this allegation by granting 25 days to Petitioners to secure expert testimony and then found: " . . . even at the late hour, no expert testimony was proffered or produced. Under such circumstances, it cannot be fairly said that the complainants were denied a reasonable opportunity to present their case fully, *either before the Board,* or the Court." (Apx. 31, Italics are the Petitioners). In this connection, the Circuit Court also found the required 15 days notice of the hearing had been given. *(Ibid,* Apx. 30)

In the petitioners' Court of Appeals Brief, it was contended that the denial of a reasonable continuance by the Board because it was barred from acting after November 4, 1968, and the lack of 15 day statutory notice constituted denial of due process of law. (R. 51, p. 31) The Maryland Court of Appeals denied this claim on the basis that no prejudice was shown and again found the notices "proper". (Apx. 3, 4)

Nevertheless the Board plainly violated the law and its own Rule with respect to the 15-day advertisement requirement of the Howard County Zoning Law, giving only

"two weeks" notice in each instance, in both case 506 (Apx. 54) and 511 *(Supra)*.

ARGUMENT

Petitioners ground their Petition for Certiorari in this case squarely on the principle embodied in This Court's holding in *Saunders vs. Shaw, 224 U.S. 317, 37 S. Ct. 638.* There, This Court rules that it is a deprivation of a party's right to due process for a state appellate court to deny a remand to the trial court after the apellate court gives judgment on a point ruled immaterial below, and on which evidence was excluded by the trial court.

The principle of *Saunders* applies here, petitioners submit. There is no doubt, petitioners contend, that here the Board of County Commissioners acted as trier of the fact, in the same way as the trial Court, in *Saunders,* sitting without a jury in an equity case. *Kirkman v. Montgomery County Council* 251 Md. 273, 247 A2d. 255. Here, the Commissioners themselves held they must make "findings of fact" before granting this ID re-zoning (Apx. 43)

The Circuit Court for Howard County sat as an appellate Court deeming itself bound to uphold the Board "'regardless of the fact that the theory advanced below is erroneous'" (Circuit Court Opinion Apx. 28) and only provided that its action, was at least "'fairly debatable,"' (Circuit Court's Opinion, Apx. 25,29), Obviously, the only meaningful hearing which petitioners could have on the facts *de novo* was before the Board of County Commissioners. Particularly is this true, when it is the settled zoning law of the State that the issues of mistake and change are invariably held to be matters of administrative expertise for the Board to determine. *Snowden vs. City of Baltimore,* 224 Md. 443, 168 A2d 690, *Goucher College vs. De Wolfe,* 251 Md. 638, 644; 248 A2d. 379, 383.

Practically, in Maryland the principal legal safeguard against spot zoning and to sustain the integrity of a comprehensive zoning map or plan is the mistake-change test. See *Smith v.s Board of County Commissioners of Howard County*, 252 Md. 280, 249 A2d. 708, *Hunter vs. Board of Commissioners of Carroll County*. 252 Md. 305, 250 A2d 81, *Wells vs. Pierpont*, 253 Md.554 253 A2d. 749.

The Court will recall one of the principal grounds alleged for setting aside the Board's action in petitioners' Bill of Complaint in the Circuit Court, was that the Board refused a postponement to petitioners for the purpose of calling expert evidence. Obviously, the Circuit Court believed that petitioners had been deprived of their rights of fair hearing at the Board level, or it would not have granted a 25-day continuance on the Court's own Motion, for this purpose. (Circuit Court Opinion, Apx. 30-31)

However, the Circuit Court's offer to hear expert evidence itself, could be not substitute for the initial constitutional right of petitioners to present its evidence at the Board Hearing stage. As this Court said in *Coe vs. Armour Fertilizer Works*, 237 U. S. 413, 35 S. Ct. Reporter 625:

> Nor can extra-official or casual notice or a hearing granted as a matter of favor or discretion be deemed a substantial substitute for the due process of law that the Constitution requires. *Ibid.* 237 U.S. 413, 424 35 S. Ct. Reporter 625, 629

Coe involved a State attachment statute held unconstitutional on its face, for lack of statutory notice and hearing. Petitioners contend they have been deprived of the same notice and hearing, on the material issues of mistake-change, by reason of the Board's operation and the Maryland Courts' construction of the admittedly defective Regulation 14-A as applied to them.

For the Maryland Court of Appeals to deny petitioners' right to there attack the illegality or constitutionality of 14-A, on the ground that, "that question was not raised below," (Apx. 16, 17) is itself a species of denial of due process where, the lower Court necessarily passed on the question. *Coe vs. Armour Fertilizer Works,* 237 U.S. 413, 419, 35 S. Ct. 625, 627.

The failure of both the Circuit Court and the Maryland Court of Appeals to remand this matter to the County Commissioners to take evidence on the issues of mistake-change was particularly violative of petitioners' 14th Amendment rights, petitioners contend, where the Board had flouted its own Rules, by illegally dispensing with proof of mistake-change, in promulgating 14-A.

Both the lower Court and the Court of Appeals found that the Board's Order was unsupported unless the finding of mistake-change was made. Both Courts concluded that the intermediate appellate court could supply these findings on review and without remand. But the Court of Appeals of Maryland did not pass on whether petitioners' argument that the failure of the Board to follow its own Rules on pleading, 33.01, .014, .015, 0110, .034, Apx. 93-98, and see 14.A.071, Apx. 51, to require proof by Petitioner of mistake or change in a Map Amendment case and to make findings and conclusions thereon under said Regulations and the State Administrative Procedure Act and the failure of the Circuit Court to enforce these duties, was likewise violative of Petitioners' right of due process. Petitioners say that this point is not disposed of merely by saying that the past practice of the Maryland Court of Appeals is to affirm Zoning Boards, even though they do not consider the essential issues *at all*, absent administrative regulations.(Apx. 14)

That does not meet Petitioners' point. Petitioners argued that its own valid Regulations were binding upon the Board, if 14-A could not sustain the Board's Order, under applicable State precedent *(Bloede v. McNabb,* 231 Md. 452, 190 A2d. 780) as well as, by analogy, *Service v. Dulles,* 354 U.S. 363, (Petitioners' Reply Brief, P. 8 R. 52A).

Petitioners also plainly argued that the Board's flouting of its Rules with respect to mistake-change violated Petitioners' 14th Amendment rights of both equal protection and due process (Petitioners' Main Brief, R51 p. 30-31, Petitioners Reply Brief R. 52A).

Clearly, where detailed regulations are promulgated but an administrative board dispenses with the requirements of its regulations so as not to require certain pleading and proof thereunder and evidence is not offered thereon by proponents, then litigants are deprived of fair notice and hearing when that issue is held material and decided against them at a review stage. *Saunders vs. Shaw, supra, Coe vs. Armour Fertilizer Works, supra. Cf. Sniadich v. Family Finance Co.* 89 S. Ct. 1820. Petitioners also contend that where the Board had promulgated Rules stating that mistake-change is to be pleaded, litigated and considered before it in all other Map Amendment cases, and Ordered that it must make "findings of fact" in I-D zoning, here (Apx. 43) then it is for the Board, not the Courts, to consider it, if mistake-change must legally be considered. Particularly is this the case where the Board declares itself bound by the State Administrative Procedure Act[1], 41 Md. Code 244, Apx.

[1]Defendant Commissioners Lawyer stated that the hearing was conducted under the State Administrative Procedure Act (Apx. 72); the Board made detailed findings of fact and conclusions, as Regulation 14-A required, albeit insufficiently (Apx. 71, 72); and the Regulation requires an Appeal under the Maryland Rules governing appeals from Administrative Agencies (Apx. 53, 100) See *Hyson v. Montgomery County Council,* 242 Md. 55, 62, 67, *Mandel v. Board of County Commissioners of Howard County,* 238 Md. 208, 216, 217.

99, 100, and that Act requires findings of fact and conclusion of law to support decisions and orders in "Contested Cases." *Ibid.* Sec. 254.

Petitioners contend that the fundamental unfairness of the procedure here was for the Board, with Court sanction, to allow respondents Rouse, in their Petition, and in Regulation 14-A-ID to inform their adversaries that proof of mistake-change was neither necessary nor required, (Apx. 57) to allow Rouse to close its case without proving it, and to grant the Order of Re-Zoning, on detailed findings and conclusions, but without relying on mistake-change. Then, after Petitioners here have been so misled on the material issues, they are told at the intermediate appellate level that what was not material below, was essential. This plainly violates petitioners rights under the 14th Amendement, it is submitted. *Saunders v. Shaw, supra, Coe v. Armour Fertilizer Works, supra.* See *Service v. Dulles, supra Cf. Sniadich v. Family Finance Corp., supra.*

Petitioners were not only deprived of their right to due process of law and equal protection of the laws, because the Board of County Commissioners, with the approval of the Circuit Court and the Maryland Court of Appeals, excepted the Rouse petitioners from every safeguard against spot zoning and arbitrary action by zoning commissioners. The record clearly shows, petitioners contend, that the speed with which this proceeding was conducted and considered by the several administrative and judicial tribunals deprived petitioners of the right to have this case heard and determined in the calm, patient and deliberate manner which every litigant is due under the Federal Constitution.

Haste was the keynote in this case from the initial Rouse Petition on September 18, 1968 in the face of the zoning law moratorium to take effect on November 4, , at the Circuit Court and even at the Court of Appeals, where the Argument

was advanced. The Board violated the Public Local Law and its own codifying regulation as to notice in Case 507 and Case 511. Yet, it is an index of the haste with which the Maryland Court of Appeals decided this case that it states twice in its Opinion that the hearings were held pursuant to "proper notice of 15 days Apx. 3,4. Merely counting with the use of a daily calendar, applying Maryland Rule 8, (Apx. 102) or Art. 94 §2 conclusively establishes that notice was, in each instance, short by one day. Alternately the Court could simply have looked at the newspaper publication notices, in case 506, certifying a "two week" notice *in haec verba* (Apx 53). The Board denied a continuance for the petitioners to obtain expert testimony on the stated ground that its zoning moratorium and its own expiration was three days away and that proper 15 day notice had been given. The Maryland Courts affirmed the denial on the latter ground.

The Circuit Court described the Board's action as appearing to be something more than "deliberate speed", and the Court allowed 25 days postponement of its hearing for the purpose of obtaining experts. But obviously, petitioners submit, a hearing before the reviewing Court would have been no substitute for a Board hearing. The Board is the fact-finding tribunal, how could the Court consider the facts *de novo* when it presumed the Board's Order correct in the first place, one could respectfully ask? But for moratorium and the Board's expiration, it is submitted that the Court might well have remanded to the Board,during these 25 days, as petitioners contend the Court should have done.

The Circuit Court plainly stated, however, that it regretted that the consideration of a matter so complicated and of such importance should be heard and decided by it in four days.

The advancement by the Court of Appeals of this case for argument, when it was obviously a matter of no *public*

importance, operated, petitioners contend, to impair their rights and more time, petitioners respectfully contend, ought to have been employed to consider the questions which the Maryland Court of Appeals did not fully consider or, petitioners most respectfully submit, upon which it erred as a matter of constitutional law.

CONCLUSION

Because the Circuit Court failed to remand this case to the Board, in the circumstances of this case, and because the Maryland Court of Appeals sanctioned such a departure from the accepted and usual course of judicial proceedings safeguarding petitioners right to full and fair notice of the issues and opportunity to be heard, under the 14th Amendment of the United States Constitution, the exercise of this Court's power of supervision is called for and this Petition should be granted.

Respectfully submitted

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APPENDIX A.

Opinion of the Court of Appeals of Maryland.
(Filed May 27, 1969)
253 Md. 602, 253 A2d. 727

Appellants, aROUSEd[1] by the impending invasion of their heath by General Electric Company (GE), have adopted, as a means of resistance, a kind of scorched earth policy with Fabian overtones. Aware of GE's unwillingness to exercise its option to buy the 1,087 acre tract (the property) upon which it proposes to build a $250,000,000 plant unless and until the zoning is changed to ID (Industrial Development District), appellants fought the application for reclassification both before the County Commissioners and in the Circuit Court for Howard County. They lost both of those battles; here they lose the war.

A proper understanding of this appeal requires a brief reference to the short history of the "New Town of Columbia." In August 1965 The Howard Research and Development Corporation, a Maryland corporation (HRD), had accomplished the acquisition of about 14,000 acres of land in Howard County. On 10 August 1965 the Board of County Commissioners (the Commissioners) designated the entire tract as a "New Town District" pursuant to existing zoning regulations. Under the direction of The Rouse Company which owns 50% of the stock of HRD (the other 50% is owned by a life insurance company) the new town began to evolve. Early in 1968 HRD learned that GE had in mind building a major plant somewhere in the northeast. GE took a very hard look at proposals made by HRD and in June

1. Comment, *Democracy in the New Towns: The Limits of Private Government*, 36 U. Chi. L. Rev. 379, 385 (1969).

1968 it took an option to purchase the property at a price $1,700,000 less than HRD had paid for it. GE, driving a hard bargain, insisted that the property be rezoned and ready for construction by early 1969.

The property, which abuts the southern boundary of Columbia, is approximately square, about one and one-half miles on each side. Interstate Route 95, now under construction, is its eastern boundary; the north side is bounded by new Maryland Route 175, parts of which are under construction; the western boundary is New Berger Road, planned and engineered as a four-lane dual highway and to be constructed by HRD at its expense; the southern boundary will be a spur of the C&O-B&O Railroad which is being extended from Annapolis Junction, through which the railroad's main line passes.

The northernmost 377 acre portion of the property is part of the 14,000 acres that were classified "New Town District" in 1965. On the Preliminary Plan approved in connection with the 1965 rezoning it was designated as an "employment uses" area in which the regulations permit local and general business, motels, shopping centers, and light and restricted manufacturing. HRD recently acquired the remaining 710 acres for the specific purpose of meeting GE's requirements. All but 100 of the 710 acres had been owned by two sand and gravel companies and there is uncontradicted evidence that their mining operations (a non-conforming use) had been both active and extensive. All but 57 acres (zoned M-1 [Heavy Industrial]) of the sand and gravel companies' property had been zoned R-20 (Residential – Half-acre lots) in the comprehensive zoning of 1961. The 100 acres acquired from others are also in the R-20 classification.

HRD and GE seem to have agreed that the county's existing zoning classifications were not compatible with GE's proposed use of the property. GE contemplates "the development of a production and distribution facility designed to supply the full range of major home appliances to the eastern seaboard of the country." The plant is to consist of buildings aggregating 4,500,000 square feet of floor space, costing not less than $250,000,000. An annual payroll of $100,000,000 is expected to be distributed to a minimum of 12,000 employees. Having concluded that the creation of a new zoning classification would be necessary to accommodate GE's "modern complex of industrial facilities" HRD, on 18 September 1968, filed a petition to amend the zoning regulations by adding thereto new Section 14A creating the concept of the Industrial Development (ID) Zoning District and providing the procedure for establishing such districts. At the same time HRD filed another petition seeking the deletion of the 377 acre portion from the New Town District so that it could be made a part of the 1,087 acres under option to GE. HRD also represented to the Commissioners that reclassification of the 1,087 acres to ID would be sought, if and when the Commissioners enacted Section 14A.

Pursuant to a proper notice by publication the Commissioners held the scheduled hearing, in respect of proposed Section 14A, on 11 October 1968. Experts and employees of HRD and GE testified at length in support of the adoption of the new section. A number of residents testified that they favored its adoption. Mrs. Ella Mae Bowie was the only one of the appellants who testified at that hearing. She said she had "had an opportunity to read and digest" Section 14A; she said she was in favor of "orderly industrial development" in Howard County; but she couldn't say whether she was for Section 14A or against it. The report of the Howard County Planning Commission recommended approval with some changes. On 15 October 1968 the

Commissioners adopted Section 14A, after having included the changes recommended by the Planning Commission, plus a few of their own.

On 11 October 1968, the Commissioners also heard (immediately following the Section 14A hearing) testimony in respect of HRD's petition to delete the 377 acre portion from the New Town District. Counsel for the protestants (appellants included) said he thought it was "necessary to agree to the deletion. We have no opposition to that," he said, adding that the protestants were "not going to raise any opposition." There followed then a lengthy colloquy between counsel and the Commissioners, after which, on motion of the protestants, the hearing was continued to 15 October at 1:30 p.m. Other than to introduce (by stipulation) the testimony offered in the hearing on Section 14A, the protestants presented nothing further when the hearing was resumed on 15 October.

On 16 October 1968, the day after the Commissioners enacted Section 14A, HRD filed its petition for the reclassification of the property to an ID district. Included, of course, were the 377 acres deleted from the New Town District. The hearing, of which proper notices had been given, was held on 1 November 1968. First off the protestants, now represented by new counsel, pressed for a postponement. It was denied, as was another request made at the close of petitioners' case. Employees of both HRD and GE testified at length in support of the reclassification to ID. There was also an abundance of testimony from experts in the field of real estate, planning and zoning to the same effect. A number of citizens voiced support. The report of the Planning Commission recommending the reclassification and giving its reasons therefor was filed. The Howard County Metropolitan Commission offered no objection. Neither did the State Roads Commission. From the testimony, surveys, maps, plats,

reports and studies before the Commissioners one could conclude without difficulty that in 1961, when the comprehensive zoning map was adopted, Howard County was distinctly rural in character. Nearly all of the property was classified R-20. Adjacent areas were classified either R-20 or R-40 (Residential - 1 acre lots). A narrow, secondary road provided the only access to the property. No rail service was available. Other than farming the sand and gravel operations constituted the only business activity in the area. One could also arrive at the following conclusions. The rezoning in 1965 of the adjoining 14,000 acres (including the 377 acres of the property) to a New Town District resulted in the birth of Columbia and the beginning of its sturdy adolescence; its present population is said to be about 4,000. The increase in sand and gravel operations brought about the reclassification of 57 acres of the property to M-1. Interstate 95, in 1961 nothing but a dotted line on the maps, was, in 1968, under construction along the eastern boundary of the property. The interchange of the new four-lane Route 175 and Interstate 95 in the northeast corner of the property was being built in 1968 but it was unheard of in 1961. New Berger Road (North South Parkway) along the western boundary of the property had not been contemplated in 1961. No one gave rail service a thought in 1961 because there was no need for it, but a representative of the railroad's Industrial Development Department testified (in November 1968) that 37 men had been busy for nearly a year furthering the planned extension of trackage to Columbia by way of the property.

Of the appellants only Mrs. Bowie and the McMullens testified. In Mrs. Bowie's opinion, as she expressed it, while "industry is very important * * * the value of * * * [her] property was going to drop" and the relocation of roads would cause some inconvenience. Mr. McMullen expressed some uneasiness about the effect of GE's activities on the value of his property. He thought "property values would

definitely go down." Mrs. McMullen expressed similar misgivings. Mr. McMullen returned to the witness chair later on and told of his investigation of GE's plant at Louisville, Kentucky. His comment is of interest:

> "* * * I would like to say that all the information that I obtained [from Louisville] was most favorable. The people down there were only unhappy with General Electric because they weren't looking for more acreage down there and that they looked upon them as being first rate corporate citizens. That's all I have to say."

Mrs. Carroll E. Lonas (not an appellant), felt that the value of her property would be diminished. No expert testimony was produced on behalf of the appellants or other protestants nor was any effort made to support the anticipated decline in the value of their properties. Indeed, there was considerable expert testimony to the contrary.

On 4 November 1968 the Commissioners approved the deletion of the 377 acres from the New Town District and the reclassification of the property to ID. Their findings were as follows:

> "(a) That the Petitioners' preliminary plan introduced in evidence meets the requirements of Section 14-A of the Zoning Regulations.
>
> "(b) That if the petition is granted, the subject property will be used as an industrial development under the ownership of The General Electric Corporation.
>
> "(c) That the intent to develop the tract as an industrial development is bona fide and that the parties involved have the resources to develop it in accordance with the preliminary plan introduced in evidence.

"(d) That the Petitioner and the parties involved in the proposed development of the subject property have the requisite intent and capability to fulfill their additional contractual requirements, if this rezoning is granted.

"(e) That the granting of this rezoning is in the public interest and will promote the public health, safety, morals and general welfare.

"(f) That the granting of this rezoning and the industrial development of the subject tract is not inconsistent with and is compatible and harmonious with the comprehensive plan of development of Howard County, as evidenced by the report of the Planning Commission.

"(g) That the granting of the rezoning and the development in accordance with the preliminary development plan submitted will not adversely affect the surrounding properties.

"(h) That the subject property is suitable for the development of a large industrial complex."

On 3 December 1968 the appellants filed their bill of complaint in the Circuit Court for Howard County. After reciting the facts they alleged that the "act of the * * * Commissioners * * * was illegal, unconstitutional, arbitrary, capricious, discriminatory, invalid and void * * * [stating as] reasons:

"(a) That there was no substantial or sufficient evidence to support *the finding of said Board that said reclassification was warranted due to a change in the character of the neighborhood.* [Emphasis added.]

"(b) That the zoning reclassification is not in accordance with the General Plan of Howard County as adopted July 20, 1960.

"(c) That there was not sufficient time allowed to acquire expert testimony to refute the recommendation of the Planning Commission of Howard County.

"(d) That said reclassification is strictly for the private interests of private individuals and will be a detriment to the residential areas in said neighborhood.

"(e) That said reclassification will result in a congested and harmful traffic pattern within the area.

"(f) That said reclassification will adversely affect the said properties of your Complainants and greatly depreciate the value thereof."

The case came on for trial before the chancellor, Macgill, C.J., on 27 January 1969. The appellants repeated substantially the same testimony given before the Commissioners. No expert testimony was offered although on 2 January 1969 Judge Macgill, over the objection of HRD, had indicated that "he would hear additional testimony in open court should the Complainants desire to produce such." HRD offered additional testimony but it was concerned chiefly with appellants' alleged lack of standing.

Judge Macgill filed his opinion on 31 January (four days later); he commented on his expedition in this regard:

"When the matter came on for hearing before the writer in open court, on January 27th, 1969, a certain amount of additional testimony was put on by the Complainants and transcripts of the testimony taken in several hearings before the Board of County Commissioners were offered in evidence along with a quantity of exhibits which had been filed with and considered by the Board in arriving at its decisions. This Court has been asked to give its decision on or before January 31st and it has agreed to do so, but it

> is regrettable that the consideration of a matter so complicated and of such importance should be limited to such a short period of time."

Judge Macgill concluded that the "circumstances are sufficient to show that Mr. and Mrs. McMullen, at least, have standing to maintain the action." In this Court HRD put it to us quite strongly that Judge Macgill erred in this regard and that the appeal should be dismissed. We shall not undertake an analysis of the evidence relied upon by HRD to support its contention. It suffices to say we are not persuaded that Judge Macgill's finding was clearly erroneous.

HRD insisted below, as it did here, that the ID district is in reality a "floating zone." We think Judge Macgill was correct in rejecting this concept of the ID district. He said:

> "The Board, in making its findings, apparently was treating the I-D district as a floating zone and therefore deemed it unnecessary to make findings as to whether there had been a change in conditions since the adoption on May 11th, 1961, of the comprehensive zoning map or a mistake in zoning as to the property in question. The requirements of showing mistake or change are not applicable when a floating zone is involved. *Huff v. Board of Zoning Appeals*, supra [214 Md. 48 (1957)], *Costello v. Sieling*, 223 Md. 24, *Beal v. Montgomery County Council*, 240 Md. 77, and *Board of County Commissioners v. Tipton*, 244 Md. 77. If the I-D district be a floating zone, and it has many of the characteristics of one, then, on the evidence summarized, this Court would have no hesitation in finding that the action of the Board was, at least, 'fairly debatable' and consequently must be allowed to stand.
>
> "The I-D distract is different in one important aspect from the floating zones described and

discussed in the cases cited. It permits *all* manufacturing and industrial uses while the other floating zones *specify the uses permitted* and exclude all others. If the I-D district is valid as a floating zone, then it can only mean that industrial uses, indefinite as to number and unascertainable as to character, may be permitted to descend or be anchored in any use are dependent upon the factual findings in any particular case, a privilege which is presently denied to even the lightest of commercial uses. The Board, in approving the creation of the I-D district, did not specifically express an intention that it was planned to be compatible with residential uses or was to be 'superimposed upon property previously classified as residential on substantially the same basis that a particular use might be allowed in a residentially zoned area as a special exception.' *Overton v. Board of County Commissioners,* 223 Md. 141, 150. A comparison of the restrictions imposed on the I-D district with those imposed on the various other non-residential districts in the zoning regulations of the County shows that the I-D restrictions are not materially more detailed or more stringent, particularly in view of the open-ended uses permitted. It is true that a greater setback is required but this is balanced by the fact that the unspecified uses of the I-D district may, potentially, have a greater impact on the surrounding area than those uses permitted in all except M-2 districts.

"There is, in fact, no explicit mandate in the language providing for the district that *a site plan be approved* * * *. More importantly, there is no provision for a revocation of the classification if the restrictions imposed are not complied with."

* * * * * * *

"It is true that the I-D district has one of the features of a floating zone. It was not in the original zoning ordinance and was not designated on the

comprehensive zoning map. This fact, alone, however, would not make it a floating zone. *Overton v. Board of County Commissioners*, supra."

Compare Haldemann v. Board, Md. (1969) [No. 215, September Term, 1968, filed 1 May 1969], holding M-R (Manufacturing-Restricted) to be a floating zone.

The chancellor went on to agree with the complainants (appellants) that the reclassification of the property to I-D did not create a floating zone and "that mistake or change is the proper test to be applied." But, he said, he found

> "* * * sufficient evidence of both to support the granting of the application and to rebut the contention that the action of the * * * [Commissioners] amounted to spot zoning.
>
> "The evidence before the Board, and before this Court, shows that since the adoption of the comprehensive zoning map in 1961, a substantial amount of acreage in the subject property was reclassified, on November 13th, 1962, from R-20 to M-1 northwest of Interstate 95 and that with the advent of Columbia, another substantial amount of acreage was preliminarily designated under the N-T zoning for 'employment center' uses, which, as it has been observed, comprehend both commercial and industrial uses. There was testimony that a railroad spur was planned along the southwesterly portion of the property and highways along the north and northeast boundaries. The southerly line of the property is bounded by I-95. There is a reasonable prospect, therefore, that the land in question will be substantially buffered from surrounding properties, whether they be residential or otherwise. Cf. *Beall v. Montgomery County*, supra, at page 97. It is true, as has been remarked, that only I-95 is presently under construction but there was evidence before the Board sufficient to show that the railroad and the other

roads were 'reasonably probable of fruition in the foreseeable future,' and the Board could take these prospects into consideration in deciding the question of reclassification. *Rohde v. County Board of Appeals*, 234 Md. 259, 264, *Jobar Corporation v. Rodgers Forge*, 236 Md. 106, 112. These evidences of change and of reasonably imminent change were sufficient, in the opinion of this Court, to make the action of the Board 'fairly debatable.' *Wakefield v. Kraft*, 202 Md. 136, *Hyson v. Montgomery County*, 242 Md. 55, *Kirkman v. Montgomery County Council*, 251 Md. 273.

"As to the question of mistake, the Board had before it the testimony of Mr. Bockover as to the unsuitability of that portion of the property zoned R-20 for residential uses. An aerial photograph, offered in evidence, bears out his testimony. Substantial areas of the land appear to have been denuded and exploited for the purposes of quarrying sand and gravel. For a somewhat comparable situation, see *Ark Readi-Mix v. Smith*, 251 Md. 1, where the Court of Appeals sustained the action of the zoning authorities in reclassifying property occupied by a sand and gravel plant as a non-conforming use, from a residential classification to a manufacturing classification."

Appellants contend that "since mistake-change was not even considered, let alone 'debated,' 'fairly' or otherwise by the zoning board, it was an unconstitutional usurpation of legislative power for the lower Court to substitute its judgment for the zoning board's and attempt to apply judicial expertise to an area of expertise reserved by constitutional law for the County Commissioners." The same contention was made before Judge Macgill who disposed of it in the paragraph of his opinion which follows:

"As it has been observed, the Board, in arriving at its conclusion, made no findings on the evidence

> before it as to change or mistake but acted on the theory of law that the I-D district was a floating zone. It is stated as a principle of law, however, that: 'The reviewing court has the right to consider grounds justifying the decision below, although the decision was not rested on such grounds and regardless of the fact that the theory advanced below is erroneous.' 2 Am. Jur. 2d 'Administrative Law,' Section 756, citing *Moore v. Clarke,* 171 Md. 39; and *Union Light, Heat and Power Co. v. Public Service Commission,* (Ky.) 271 S.W. 2d 361."

The authorities cited by Judge Macgill could be supplemented by our decisions in *Kirkman v. Montgomery County Council,* 251 Md. 273 (1968), *Clark v. Wolman,* 243 Md. 597 (1966), and *Serio v. Mayor & City Council,* 208 Md. 545 (1956), in which will be found solid support for the principle of law stated by him. In *Hoffman v. Mayor & City Council,* 187 Md. 593, 602 (1947), it was said:

> In *Heaps v. Cobb,* 185 Md. 374, 45 A.2d 73, there was no evidence in the case to support the finding of the Board of Trustees, but in this case there is evidence to support the finding of the Board of Zoning Appeals. It is true that the reason set out in the resolution of the Zoning Board for refusing to grant this permit is not based on the reason pointed out in this opinion. Without deciding the question of whether the reason given by the Board is correct or not, it is none the less true that if its conclusion was correct it will not be set aside, even if the reason given therefore is wrong."

It is true, as appellants point out, that HRD's main effort before the Commissioners was directed to its claim that the I-D district was in fact a floating zone. But, it seems, HRD did not intend to rely entirely on that theory because in its petition, after asserting that "the newly created 'floating' zone district" did not require proof of mistake-change, it went on

to state that "as will be shown at the hearing there has in fact been a substantial change in the character of the neighborhood." Appellants must have been under the impression when their bill of complaint was filed that the Commissioners had made a finding of "change in the character of the neighborhood," because they complained that there was "no substantial or sufficient evidence to support" such a finding. They point out, also, that the "mistake" testimony came in "by sheer accident" but even if that is so its probative force is not thereby diminished. Incidentally, it might be noted, the Commissioners did not use the expression "floating zone" in their opinion.

Appellants argue at some length that the evidence is not sufficient to "justify the rezoning." We are not persuaded that this is so. We think there was quite enough evidence, virtually all of it undisputed, before the Commissioners to make the issues of change and mistake fairly debatable, even though they may not have been debated, fairly or otherwise, and we see no need to expand this opinion by discussing it further.

Early on we referred to the fact that GE had laid it down quite firmly that unless the property could be rezoned and ready for construction by early 1969 it would not go forward with the project. Expedition, if not haste, became necessary because of two impending events. The first was the submission to the voters in the election scheduled for 5 November 1968 of the proposed new charter for Howard County. If adopted by the voters the Commissioners, as provided in Section 1103(a) of the charter, would "continue to hold office and exercise and perform their present powers and duties" until 28 January 1969, the effective date of the new government, at which time they would become automatically three members of the new five member County Council. The second impending event was the zoning

moratorium established by Chapter 181 of the Laws of Maryland of 1967. It was there provided, that "if * * * [the] charter * * * shall be ratified," final action on any zoning shall be prohibited until the new government shall have assumed office. Appellants have striven to denigrate the action of the Commissioners with such expressions as "the last gasp" of a "lame duck board * * * one day short of its lawful demise." While we deny no one the freedom of epithet we think the appellants, in this context, are somewhat out of line. Far from being "lame ducks" the Commissioners were to become the majority of the new County Council upon the adoption of the charter. It was the possibility of the moratorium which made imperative the passage of the order of reclassficiation before 5 November. HRD surely was justified in being fearful that postponement until February 1969 might be fatal to the whole project. Without doubt the vigor and dash displayed by the Commissioners blunted the appellants' prime weapon but it does not follow that, in the process, any of their rights were violated.

The relcassification is invalid, say appellants, because it is special legislation for a private corporation and not for the general welfare. "It is clear from the record [they continue] that from start to finish * * * [the Commissioners] acted as the handmaiden of Rouse [HRD] and G.E. [GE] rather than as guardian of the public interest." It would have to be conceded that at some future time GE and perhaps HRD may become the beneficiaries of this reclassification but appellants have not come near showing that the public interest and welfare may not also be served. Indeed, there are pages of testimony concerning benefits expected to inure to Howard County and its citizens. In *Pressman v. Mayor & City Council*, 222 Md. 330, 339 (1960), Chief Judge Brune, for the Court, said:

> "We also find the appellants' contention that the rezoning is invalid spot zoning because it is solely for

> the benefit of the proponents and hence is not in accordance with a comprehensive zoning plan or the general welfare, is not sustainable. Doubtless the proponents deemed it to their advantage to seek and obtain the rezoning, and it may very well be. Certainly, they would be unlikely to venture the large amounts of money required for the establishment of shopping centers unless they so believed."

Traffic congestion is "certain to be caused if this rezoning is granted" argue Appellants. It must be supposed, of course, that the volume of vehicular traffic will substantially be increased by GE's activities. But it must also be supposed that the proposed new roads (Interstate 95, new Route 175 and the New Berger Road) will be able to handle the increased volume well enough to avoid congestion. In any case there is uncontroverted testimony to that effect. In this regard, what we said in *Marcus v. Montgomery County Council*, 235 Md. 535, 541 (1964), seems to be apposite:

> "Appellants draw attention to the claim that commercial and apartment zoning is likely to bring more people to a given area and that as a consequence the traffic and school population will increase, and that those members of the neighborhood using the local school and shopping area will suffer from the consequent traffic congestion and overpopulated school facilities. These are inconveniences likely to be suffered by any member of the public, far or near, and do not require a denial of the application."

We have dealt with what we think are the most significant of the barrage of contentions made by the Appellants. As to the remaining ones, we shall not undertake a discussion of them either because they present nothing new or substantial, or because they were not raised in the court below. Maryland Rule 885. Perhaps we should note that we are not unmindful

of appellants' attack, in this Court, on the validity of the ordinance (Section 14A) establishing the ID zoning district. Since that question was not raised below we shall consider Section 14A as a valid enactment of law. *Board v. Levitt & Sons*, 235 Md. 151, 153 (1964).

DECREE AFFIRMED.
COSTS TO BE PAID BY
APPELLANTS.

APPENDIX B.

Opinion and Decree of Circuit Court for Howard County (Filed January 31, 1969)

The Complainants, who are residents in the Sixth Election District of Howard County and who own residential properties in a subdivision known as Annetta Gardens situate on Lark Brown Road, a County Road, have filed a bill of complaint (1) to strike down the action of the Board of County Commissioners whereby 1087 acres of land were reclassified from R-20, M-1, and N-T (New Town) districts to a recently created I-D (industrial development) district. The acreage in question was described as being located southwest of Maryland Route 175, east of Oakland Mills Road, northeast of Route 32 and west of Interstate 95 which is now under construction. The bill alleges that the action of the Board was arbitrary, capricious and illegal for the following reasons: (1) there was insufficient evidence of a change in the character of the neighborhood to warrant the reclassification, (2) the reclassification was not in accordance with the general plan adopted by the County, (3) the Complainants were not allowed sufficient time to secure expert witnesses to refute the recommendation of the Howard County Planning Commission, (4) the reclassification was made to serve the private interests of the corporate Respondents and was detrimental to the residential areas in the neighborhood, (5) the reclassification would create traffic congestion in the area and (6) the reclassification would adversely affect and depreciate the values of the properties of the Complainants. The County authorities and the corporate Respondents filed answers generally denying the allegations of the bill.

When the matter came on for hearing before the writer in open court, on January 27th, 1969, a certain amount of additional testimony was put on by the Complainants and

transcripts of the testimony taken in several hearings before the Board of County Commissioners were offered in evidence along with a quantity of exhibits which had been filed with and considered by the Board in arriving at its decisions. This Court has been asked to give its decision on or before January 31st and it has agreed to do so, but it is regrettable that the consideration of a matter so complicated and of such importance should be limited to such a short period of time.

The Rouse Company, (hereinafter called "Rouse") which manages the affairs of the Howard Research and Development Company which, in turn, owns a substantial block of acreage in Howard County known as "Columbia" and which is being developed under a zoning classification designated as "New Town" zoning, learned that the General Electric Company, (hereinafter called "GE") was interested in a location for an electrical appliance manufacturing plant somewhere in the northeast portion of the United States. Rouse was able to interest GE in locating in Howard County, in the Columbia area. Because of the particular requirements of GE, including a requirement that approximately 1100 acres of land be made available to it, a petition was filed with the Board of County Commissioners which requested that the zoning regulations be amended so as to create a new zoning classification to be designated as an "industrial development" or I-D district and which was intended to fall within the category of a "floating zone", a concept popularized by the Court of Appeals, approval of M-R (manufacturing-restricted) districts in *Huff v. Board of Zoning Appeals*, 224 Md. 48 (1957).

The Howard County Planning Commission, to which this petition was referred, recommended that the proposed amendment, with some suggested changes, be adopted. On October 11th, 1968, the Board of County Commissioners held a hearing on the proposed amendment, and at the same time also considered another petition by the corporate

Respondents in this case for an amendment to the zoning map so as to delete or withdraw from the New Town zoning district a tract of 377 acres and for the addition to that district of certain other acreage in lieu of the amount proposed to be withdrawn. It was the purpose of the petitioners to add the 377 acres to a larger tract of land comprising about 700 acres, lying outside the limits of the "New Town" zoning, the bulk of which was zoned R-20 (residential) and the residue M-1 (light manufacturing), so as to provide the block of acreage required by GE. On October 15th, 1968, the Board amended, in accordance with the petition, the zoning regulations by adding an I-D district and designating it as Section 14A of the Regulations. Action was deferred on the proposed deletion of the 377 acres from the New Town district.

On October 16th, 1968, the day following the adoption of the I-D district, the corporate Petitioners filed a petition to amend the zoning map by reclassifying the 1087 acres accumulated for GE from R-20, M-1 and N-T zoning classifications to the newly created I-D classification. The Complainants, who had previously appeared and protested against the creation of the I-D district, again appeared and protested against the proposed reclassification.

In addition to a report of the Planning Commission recommending the reclassification, there was testimony produced before the Board of County Commissioners on behalf of the Petitioners tending to show that the occupancy and use by GE of the land in question for the purposes stated would be of benefit to, and fulfill some of the needs of the County, and there was testimony of experts in the fields of planning and industrial real estate to the effect that the land in question was not suitable for residential purposes and that its best use was for industrial purposes. These experts also testified that the reclassification would be compatible with

the industrial policies set forth in the 1960 general plan for Howard County and that the proposed project would not adversely affect surrounding properties. It should be observed, however, that the planning expert, Mr. William E. Finley, was an officer in both the Rouse Company and Howard Research and Development Company. Mr. Walter D. Pinkard, the industrial real estate expert, was self-employed. There was also testimony to the effect that the existing and proposed highways and roads in the area would adequately handle the increased traffic engendered by the use of the property as reclassified.

Mr. C. Howard Bockover, a realtor and independent field appraiser, who lived near the property in question, volunteered the testimony that since 914 acres of the 1087 acres in question had been used for sand and gravel quarries for over twenty years, the classification of them for R-20 uses was a mistake because they could not be reasonably adapted for such uses and that the use proposed was not only a suitable use but would have no adverse effect on surrounding properties. (So far as this writer could determine, however, from the evidence, the acreage assembled for GE did not include all of the 914 acres which had been used by the Arundel Corporation for quarrying sand and gravel but only included a portion of it; the additional land had been carved out of the N-T zoning district and that land had been designated on the amended preliminary development plan of Columbia for "Employment Center" uses.)

Mrs. Ella Mae Bowie, protesting the reclassification, believed that it would be detrimental to her property because Lark Brown Road, her access road, would be closed immediately west thereof and because there would be increased traffic and air pollution and because "the value of my property is going to drop because certainly not around an industrial plant do you have valuable homes." Mr. Leo M.

McMullen and his wife, Mrs. LaRue V. McMullen, were substantially of the same opinion. There were other persons who expressed opposition to the rezoning but since the transcript identified them only as "a lady" or "a gentleman", it cannot be determined whether or not they became parties to the suit before this Court.

The Board of County Commissioners, on November 4th, 1968, filed an opinion summarizing the evidence produced at the hearing and making certain findings of fact and concluding with an order granting the petition for reclassification sought. While the Board may have appeared to act with something more than "deliberate speed", it must be borne in mind that Section 344(2) of the Public Local Laws of Howard County would have prohibited any final zoning action by that body from November 5th, 1968 to January 28th, 1969, when the new charter government was to go into effect.

Before considering the validity of the action of the Board, this Court will consider the contention of the Respondents that the Complainants have failed to establish that they have standing to maintain their action. Mrs. Bowie testified in this Court that the subject property was in front of her home and approximately a city block away or a distance which she estimated to be about three hundred feet. She expressed the belief that the proposed rezoning would turn the area into an industrial slum so that it would be impossible for her to continue living there and that her home would be devalued. Mr. McMullen was of the opinion that his property was about three hundred feet from the subject property and that the proposed use thereof would greatly diminish the value of his residential property because of the dead-ending of Lark Brown Road and the increased volume of heavy traffic in the area. Mr. Charles C. Deist testified that his property was about one thousand feet distant from the property in question and that the rezoning thereof would make it difficult for him to sell and recover the money which had been put in his home.

The corporate Respondents then put on testimony to show that the Bowie dwelling was twelve hundred and thirty feet, the Deist dwelling was eleven hundred feet, and the McMullen dwelling was five hundred and fifty feet, respectively, from the property line of the reclassified land. Presumably, the distances from the Complainants' property lines, as distinguished from their dwellings, would be somewhat less.

The Respondents rely on *Wilkinson v. Atkinson*, 242 Md. 231, and *DuBay v. Crane*, 240 Md. 180, in support of their contention that the Complainants, in view of the distances mentioned and in view of the fact that the projected Little Patuxent Parkway would form a barrier similar to the Baltimore Beltway referred to in the cited cases, have shown insufficient interest in the subject matter to give them standing to attack the Board's decision. This Court is of the opinion that the circumstances are sufficient to show that Mr. and Mrs. McMullen, at least, have standing to maintain the action. See: *Cassel v. City of Baltimore*, 195 Md. 348; *Baltimore v. N.A.A.C.P.*, 221 Md. 329; *Richmark Realty v. Whittlif*, 226 Md. 273, and *The Chatham Corporation v. Beltram*, 243 Md. 138. There appears to be no contention that the GE site is not clearly visible from the McMullen property and if it is reasonable to compare a paper parkway to an existing and heavily traveled beltway which was the decisive factor in the rulings in the *DuBay* and *Wilkinson* cases, it would seem to be just as reasonable to ask the Complainants to imagine that the GE plant was not there as to ask them, in effect, to imagine that the highway *was* there. In this connection, it might be pointed out that there was testimony that GE had plans to begin immediate construction of a portion of its facilities but the time when the parkway would be constructed was nowhere near so definite. Cf. *Howard County v. Merryman*, 222 Md. 314, 323. In any event, assuming the eventual building of the parkway, the temporary damage in the indefinite interval would nonetheless be damage. It may be questioned, however, whether the proposed reclassification would change things so much to the

detriment of the Complainants as they apparently supposed. As it has been observed, the area deleted from the New Town Zoning had been designated for "Employment Center" uses which include all types of commercial uses as well as M-R and M-1 uses. See: *Sections 17.018E, 17.018F and 17.021(3)b* of the Zoning Regulations.

The Board of County Commissioners, in its resolution granting the reclassification, made the following findings:

(a) That the Petitioners' preliminary plan introduced in evidence meets the requirements of Section 14-A of the Zoning Regulations.

(b) That if the petition is granted, the subject property will be used as an industrial development under the ownership of the General Electric Corporation.

(c) That the intent to develop the tract as an industrial development is bona fide and that the parties involved have the resources to develop it in accordance with the preliminary plan introduced in evidence.

(d) That the Petitioner and the parties involved in the proposed development of the subject property have the requisite intent and capability to fulfill their additional contractual requirements, if this rezoning is granted.

(e) That the granting of this rezoning is in the public interest and will promote the public health, safety, morals and general welfare.

(f) That the granting of this rezoning and the industrial development of the subject tract is not inconsistent with and is compatible and harmonious with the comprehensive plan of development of Howard County, as evidenced by the report of the Planning Commission.

(g) That the granting of the rezoning and the development in accordance with the preliminary development

plan submitted will not adversely affect the surrounding properties.

(h) That the subject property is suitable for the development of a large industrial complex.

The Board, in making its findings, apparently was treating the I-D district as a floating zone and therefore deemed it unnecessary to make findings as to whether there had been a change in conditions since the adoption on May 11th, 1961, of the comprehensive zoning map or a mistake in zoning as to the property in question. The requirements of showing mistake or change are not applicable when a floating zone is involved. *Huff v. Board of Zoning Appeals,* supra, *Costello v. Sieling,* 223 Md. 24, *Beall v. Montgomery County Council,* 240 Md. 77, and *Board of County Commissioners v. Tipton,* 244 Md. 77. If the I-D district be a floating zone, and it has many of the characteristics of one, then, on the evidence summarized, this Court would have no hesitation in finding that the action of the Board was, at least, "fairly debatable" and consequently must be allowed to stand.

The I-D district is different in one important aspect from the floating zones described and discussed in the cases cited. It permits *all* manufacturing and industrial uses with the exception of certain specified uses while the other floating zones *specify the uses permitted* and exclude all others. If the I-D district is valid as a floating zone, then it can only mean that industrial uses, indefinite as to number and unascertainable as to character, may be permitted to descent (*sic*) or be anchored in any use area dependent upon the factual findings in any particular case, a privilege which is presently denied to even the lightest of commercial uses. The Board, in approving the creating of the I-D district, did not specifically express an intention that it was planned to be compatible with residential uses or was to be "superimposed upon property previously classified as residential on substantially the same basis that a particular use might be allowed in a residentially zoned area as a special exception."

Overton v. Board of County Commissioners, 223 Md. 141, 150. A comparison of the restrictions imposed on the I-D district with those imposed on the various other non-residential districts in the zoning regulations of the County shows that the I-D restrictions are not materially more detailed or more stringent, particularly in view of the open-ended uses permitted. It is true that a greater setback is required but this is balanced by the fact that the unspecified uses of the I-D district may, potentially, have a greater impact on the surrounding area than those uses permitted in all except M-2 districts.

There is, in fact, no explicit mandate in the language providing for the district that *a site plan be approved,* although, perhaps, it could plausibly be argued that such a requirement was implicit in the provision for preliminary development plans. *Section 14A.0712* of the Regulations, as amended. More importantly, there is no provision for a revocation of the classification if the restrictions imposed are not complied with.

In one of the recent cases on the subject, *Bigenho v. Montgomery County,* 248 Md. 386, 391 (1967), the Court of Appeals was explicit as to the characteristics of a floating zone, saying that "the use must be compatible with the surrounding neighborhood, it must further the purposes of the proposed reclassification, and special precautions are to be applied to insure that there will be no discordance with existing uses. These precautions include such restrictions as building location and style, the percentage of the area covered by the building, minimum green area, minimum and maximum area of the use, minimum setback from streets and other uses, *requirement that a site plan be approved,* and a provision for *revocation of the classification if the specified restrictions are not complied with.* (Emphasis supplied.)

The language quoted highlights the provision which more than anything else makes a floating zone analogous to a special exception, the provision for revocation of the

classification if the restrictions are not complied with. This provision was in *Huff* and likewise was emphasized by Professor Reno in his article, "The Use of the Floating Zone", 23 Maryland Law Review 105, 118.* Such a provision is especially important where the zone created provides for uses which are not essentially compatible (although legislatively deemed so) with surrounding residential uses, as in *Huff* and unlike the zones considered in *Costello* and *Beall*, where the uses proposed were somewhat compatible in that they were residential in substance, although differing in form.

It is true that the I-D district has one of the features of a floating zone. It was not in the original zoning ordinance and was not designated on the comprehensive zoning map. This fact, alone, however, would not make it a floating zone. *Overton v. Board of County Commissioners*, supra.

To use the language of Judge Oppenheimer in *Board of County Commissioners v. Turf Valley Associates*, 247 Md. 556, 562:

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*"Limitations Upon the Use of the Floating Zone Device.

In both the *Huff* case and the *Eves* case where the Courts were dealing with rezoning of land originally zoned for residential uses to permit its use for light industry, the successful rezoning of the petitioner's land would restrict its use to the specialized industrial use set out in his development plan. This raises the question as to the materiality of such a restriction in determining the validity of the floating zone device. If the true basis for the legality of this device is its analogy to a special exception, as indicated in the *Huff* case, then this restriction is essential to its validity. The granting of a special exception is not a change in the zoning classification but merely the authorization of a specialized use, ***so that if the specialized use is not developed the land retains its original zoning classification.*** Thus, a provision limiting the successful petitioner to develop the rezoned land in accordance with his development plan justifies the analogy of the floating zone with a special exception, and refutes the argument that it constitutes rezoning of the tract to a lower classification. ***If the floating zone is not limited to a specialized type of use in accordance with the petitioner's development plan, then its analogy to a special exception breaks down;*** it becomes a case of rezoning a small tract to a lower use, i.e., spot zoning, requiring evidence of either a mistake in the original zoning classification or a change in the character of the neighborhood." (Emphasis supplied.)

"To apply the floating zone approach to such situations (as that here) would be, in effect, either to open the floodgates of uncontrolled administrative discretion or to authorize the courts to zone and to rezone.

"That the law develops does not mean it has discarded basic principles. The recognition of a new concept in public planning and legislation as to the use of land does not entail the transfer of the primary responsibility in zoning from the legislative or administrative authorities to the courts. The application of the 'analogous to a special exception' approach to the placement of a floating zone does not mean that the 'change' or 'mistake' rule is no longer applicable to petitions for spot rezoning. We find that the 'change' or 'mistake' rule applies to this case."

As it has been observed, the Board, in arriving at its conclusion, made no findings on the evidence before it as to change or mistake but acted on the theory of law that the I-D district was a floating zone. It is stated as a principle of law, however, that: "The reviewing court has the right to consider grounds justifying the decision below, although the decision was not rested on such grounds and regardless of the fact that the theory advanced below is erroneous." 2 Am. Jur. 2d "Administrative Law", Section 756, citing *Moore v. Clarke*, 171 Md. 39, and *Union Light, Heat and Power Co. v. Public Service Commission*, (Ky.) 271 S.W. 2d 361.

Although this Court is of the opinion that the language of the resolution creating the I-D district is inadequate to make that district a floating zone and analogous to a special exception, it does not conclude, as a consequence, that the rezoning must be stricken down. While it appears with the contention of the Complaints that mistake or change is the proper test to be applied, it finds sufficient evidence of both to support the granting of the application and to rebut the contention that the action of the Board amounted to spot zoning.

The evidence before the Board, and before this Court, shows that since the adoption of the comprehensive zoning map in 1961, a substantial amount of acreage in the subject property was reclassified, on November 13th, 1962, from R-20 to M-1 northwest of Interstate 95 and that with the advent of Columbia, another substantial amount of acreage was preliminarily designated under the N-T zoning for "employment center" uses, which, as it has been observed, comprehend both commercial and industrial uses. There was testimony that a railroad spur was planned along the southwesterly portion of the property and highways along the north and northeast boundaries. The southerly line of the property is bounded by I-95. There is a reasonable prospect, therefore, that the land in question will be substantially buffered from surrounding properties, whether they be residential or otherwise. Cf. *Beall v. Montgomery County*, supra, at page 97. It is true, as has been remarked, that only I-95 is presently under construction but there was evidence before the Board sufficient to show that the railroad and the other roads were "reasonably probable of fruition in the foreseeable future", and the Board could take these prospects into consideration in deciding the question of reclassification. *Rohde v. County Board of Appeals*, 234 Md. 259, 264, *Jobar Corporation v. Rodgers Forge*, 236 Md. 106, 112. These evidences of change and of reasonably imminent change were sufficient, in the opinion of this Court, to make the action of the Board "fairly debatable". *Wakefield v. Kraft*, 202 Md. 136, *Hyson v. Montgomery County*, 242 Md. 55, *Kirkman v. Montgomery County Council*, 251 Md. 273.

As to the question of mistake, the Board had before it the testimony of Mr. Bockover as to the unsuitability of that portion of the property zoned R-20 for residential uses. An aerial photograph, offered in evidence, bears out his testimony. Substantial areas of the land appear to have been denuded and exploited for the purposes of quarrying sand and gravel. For a somewhat comparable situation, see *Ark Redi-Mix v. Smith*, 251 Md. 1, where the Court of Appeals sustained the

action of the zoning authorities in reclassifying property occupied by a sand and gravel plant as a non-conforming use, from a residential reclassification to a manufacturing classification.

As to the contention that the reclassification will result in traffic congestion and a "harmful traffic pattern within the area", this Court is again of the opinion that the Board had sufficient evidence before it on which to make a finding that the network of new roads, under construction or planned for construction "in the foreseeable future" (*Rohde v. County Board*, supra) would be adequate to accommodate the increased traffic density resulting from the project in question. The following quotation from *Marcus v. Montgomery County*, 235 Md. 535, 541, is a propos in this connection: "Appellants draw attention to the claim that commercial and apartment zoning is likely to bring more people to a given area and that as a consequence the traffic and school population will increase, and that those members of the neighborhood using the local school and shopping area will suffer from the consequent traffic congestion and over-populated school facilities. These are inconveniences likely to be suffered by any member of the public, far or near, and do not require a denial of the application."

Finally, no merit is found in the allegation that there was not sufficient time allowed to acquire expert testimony to refute the recommendations of the Howard County Planning Commission. The hearing before the Board on the petition to reclassify took place on November 1st, 1968, after the required fifteen days notice had been given. The decision of the Board was handed down on November 4th, 1968, and the bill of complaint attacking the decision was filed in this Court on December 3rd, 1968. On January 2nd, 1969, the Writer conferred with counsel for all of the parties and a court hearing was arranged for January 27th, 1969. At the time of the conference, the Writer indicated, over the protests of counsel for the Respondents, that he would hear additional testimony in open court should the Complainants desire to

produce such. This, in fact, was done but even at that late hour, no expert testimony was proffered or produced. Under such circumstances, it cannot be fairly said that the Complainants were denied a reasonable opportunity to present their case fully, either before the Board or the Court.

It follows from what has been said that the bill of complaint will be dismissed. It is not the prerogative of this Court to determine whether, in the event, the facts will accord with the fancies. This is a decision which, under the law, is principally committed to the legislative body and if that body has acted on substantial evidence and within the law, as this Court has found that it did, the wisdom of such action may not be questioned in this forum. *Wakefield v. Kraft*, supra, *Eckes v. Board of Zoning Appeals*, 209 Md. 432, 437, *Reese v. Mandel*, 224 Md. 121, 127, 129.

JAMES MACGILL,
Judge.

ADDENDUM-NOTES TO OPINION

Note (1): The Complainants also filed an order of appeal from the decision of the Commissioners, apparently to forestall any question as to the applicability of Section 14A.0714 of the amendment to the zoning regulations whereby the I-D classification was created. This section reads: "Any appeal from the action of the Board of County Commissioners on the petition shall be made in accordance with the Maryland Rules providing for appeals from administrative agencies."

The validity of this section is questionable. It has been, historically, the position of the Court of Appeals that the Boards of County Commissioners, in amending zoning regulations and zoning maps, were exercising a legislative

function. *Wakefield v. Kraft*, 202 Md. 136, *Board v. Levitt and Sons*, 235 Md. 151, 158. In the latter case it was pointed out that prior to the passage of Chapter 712 of the Acts of 1957, there were no statutory appeals to the courts from the zoning decisions of the Board of County Commissioners of Prince George's County, sitting as the District Council. The Howard County Zoning Enabling Act makes no provision for such appeals. It was said in *Bogley v. Barber*, 194 Md. 632, at 640, "In the absence of statutory provision for appeal or other adequate judicial review of administrative (or legislative) action the proper remedy is by bill in equity to enjoin enforcement of the action alleged to be unconstitutional or (in the case of administrative action) arbitrary or otherwise illegal." See, also *Dal Maso v. County Commissioners*, 182 Md. 200, 206 and *Ertter v. North Washington Cemetery*, 200 Md. 251, 254.

This question, however, has become complicated by certain expressions of the Court of Appeals in *Mandel v. Board of County Commissioners*, 238 Md. 208, at pages 216 and 217 and in *Hyson v. Montgomery County*, 242 Md. 55. The majority opinion, in referring to the Mandel case, stated that "We do not mean to indicate that the Council (County Council of Montgomery County) is included in the definition of agency in Code Article 41, Section 244 A, but referred to the act only for the purposes of analogy." See also, Judge Barnes' concurring opinion in that case, referring to the procedure followed in zoning cases in the Baltimore City Council.

If the Board of County Commissioners was acting as an administrative body in zoning reclassification cases, it would appear to have no standing to appeal to the Court of Appeals from an adverse Circuit Court decision. See: *Liquor Board v. Leone*, 249 Md. 263. It has, in fact, done so. *County Commissioners of Howard County v. Merryman*, 222 Md. 314, *County Commissioners of Howard County v. Turf Valley Associates*, 247 Md. 556.

This question arose in this case on the contention of the Respondents that this Court was limited, in its review of the action of the Board, to the record of the proceedings before that body. If the proceedings were legislative rather than administrative in character, and there is no statutory appeal granted by action of the Legislature, it is difficult to see how, in an independent action in equity, this Court could be confined to the record below. There is no statutory requirement in this County that the hearings of the Board of County Commissioners, at least in zoning matters, must be recorded by a reporter. In the earlier days this was not done. *Wakefield v. Kraft* was decided on the independent record made in the Circuit Court.

Note (2): This now popular expression was not the inspiration of the Supreme Court but was that of Francis Thompson in "The Hound of Heaven".

DECREE

(Filed January 31, 1969)

The bill of complaint of Leigh T. Bowie and others against the Board of County Commissioners of Howard County, Herbert W. Smull, Zoning Commissioner, and the Howard Research and Development Corporation and others, and the answers thereto, coming on for hearing and being submitted, testimony was taken in open court, counsel were heard and the proceedings read and considered, including the transcripts of the testimony taken before the said Board of County Commissioners, and the exhibits offered in evidence, including the zoning map of Howard County.

It is, thereupon, this 31st day of January, 1969, by the Circuit Court for Howard County, sitting in Equity,

ADJUDGED, ORDERED and DECREED, for the reasons set forth in the aforegoing opinion, that the said bill of complaint be, and the same is hereby, dismissed; the Complainants to pay the costs of these proceedings.

JAMES MACGILL,
Judge.

APPENDIX C.

Bill of Complaint.
(Filed December 3, 1968)

Leigh T. Bowie and Ella Mae I. Bowie, his wife, and Charles C. Deist and Winifred V. Deist, his wife, Complainants, by T. Thornton Murray, their attorney, complainingly say:

1. That your Complainants, Leigh T. Bowie and Ella Mae I. Bowie, his wife, are the owners of property known as Lot No. 18 on a Plat of "Annetta Gardens", Section Two, which Plat is recorded among the Plat Records of Howard County in Liber W.H.H. No. 8, folio 67. The improvements thereon now being known as No. 13 Allen Lane and being acquired by a Deed from Walter A. Shank, Inc., a body corporate, dated the 18th day of October 1963, and recorded among the Land Records of Howard County in Liber W. H. H. No. 408, folio 630, etc. A certified copy of said Deed marked "Complainant's Exhibit No. 1" is filed herewith and prayed to be taken as a part hereof.

2. That your Complainants Charles C. Deist and Winifred V. Deist, his wife, are the owners of property known as Lot No. 19 as laid out on the Plat of Annetta Gardens, Section One, which plat is recorded among the Plat Records of Howard County in Plat Book R.H.M. No. 8, folio 20, and being acquired by Deed from Walter A. Shank, Inc., a body corporate, dated the 8th day of December 1961, and recorded among the Land Records of Howard County in Liber W.H.H. 377, folio 667. A certified copy of said Deed marked "Complainant's Exhibit No. 2" is filed herewith and prayed to be taken as a part hereof.

3. That your Complainants Leo M. McMullen and LaRue V. McMullen, his wife, are the owners of property known as

Lots Nos. 23 and 24 as laid out on the Plat entitled "Annetta Gradens", Section One, recorded among the Land Records of said Howard County in Plat Book No. 8, folio 207, and being acquired by Deed from Grover C. Shifflett and Martha E. Shifflett, his wife, dated the 7th day of May 1966, and recorded among the Land Records of Howard County in Liber W.H.H. No. 453, folio 321. A certified copy of said Deed marked "Complainant's Exhibit No. 3".

4. That the Petitioners, as well as others, were protestants at the hearing of the Board of County Commissioners on Case No. (*sic*) Board of County Commissioners No. 507 held on the 11th of October, 1968, and the 15th of October, 1968, and they (the Petitioners) were also present at a hearing of Case No. (*sic*) Board of County Commissioners 511 held on November 1, 1968, and that they are aggrieved by the approval of the application of Howard Research and Development Corporation, Columbia Industrial Development Corporation, and Columbia Service Properties, Inc., by the Board of County Commissioners on November 4, 1968.

5. That the Respondents Howard Research and Development Corporation and Columbia Industrial Development Corporation and Columbia Service Properties, Inc. are owners of various tracts and parcels of land in Howard County and parcels of that land is in the immediate vicinity of the properties of the Complainants.

6. That the Respondents, Howard Research and Development Corporation and the Columbia Industrial Development Corporation and Columbia Service Properties, Inc. did petition the Board of County Commissioners of Howard County to amend the zoning map of Howard County so as to reclassify 1,087 acres of land from R-20, M-1 and N-T Districts to an I-D District, located southwest of

Maryland Route 175, east of Oakland Mills Road, northeast of Route 32 and west of proposed Interstate Route I-95.

7. That on or about the 23rd day of October, 1968, at its regularly scheduled meeting, and again at a special meeting on the 29th of October, 1968, the Planning Commission of Howard County did consider said petition of the Howard Research and Development Corporation and Columbia Industrial Development Corporation and Columbia Service Properties, Inc. and recommended approval of the proposed reclassification to an I-D District for various reasons or set forth in its report; a copy of said report being filed herewith and designated as Complainants Exhibit No. 4.

8. That on or about the 1st day of November, 1968, said cause was set for a hearing at which time your Complainants appeared as protestants and testified in opposition to the proposed reclassification, said cause being designated Board of County Commissioners Case 511.

9. That the said Harry T. Murphy, Alva S. Baker, Jr., and Charles E. Miller constituting the Board of County Commissioners of Howard County, Respondents, did by its Opinion and Order dated the 4th day of November 1968, grant the petition of Howard Research and Development Corporation, Columbia Industrial Development Corporation and Columbia Service Properties, Inc., respondents for an amendment to the zoning map of Howard County so as to reclassify the hereinbefore referred to parcels of land from an R-20–M-1–Md. N-T to an I.D. district a zerox (*sic*) copy of said opinions and orders are filed herewith and designated Complainants exhibit No. 5.

10. Your Complainants believe and therefore allege, that the act of the said Board of County Commissioners of Howard County, Harry T. Murphy and Alva S. Baker, and

Charles E. Miller, was illegal, unconstitutional, arbitrary, capricious, discriminatory, invalid and void based upon the following reasons:

(a) That there was no substantial or sufficient evidence to support the finding of said Board that said reclassification was warranted due to a change in the character of the neighborhood.

(b) That the zoning reclassification is not in accordance with the General Plan of Howard County as adopted July 20, 1960.

(c) That there was not sufficient time allowed to acquire expert testimony to refute the recommendations of the Planning Commission of Howard County.

(d) That said reclassification is strictly for the private interests of private individuals and will be a detriment to the residential areas in said neighborhood.

(e) That said reclassification will result in a congested and harmful traffic pattern within the area.

(f) That said reclassification will adversely affect the said properties of your Complainants and greatly depreciate the value thereof.

To the end therefore:

(a) That this Honorable Court by its Decree, declares the Resolution of the Board of County Commissioners of Howard County, dated 4 November, 1968 to be illegal, unconstitutional, invalid and void.

(b) That the said County Commissioners and the said Herbert Smull, Zoning Commissioners, Respondents may be enjoined and restrained from amending the Zoning Map of Howard County so as to reclassify the hereinbefore referred to property from R-20–M-1–N-T to an I-D district.

(c) and for each other and further relief as the nature of their case may require.

And as in duty bound.

(Signatures, Acknowledgement, omitted.)

APPENDIX D.

Before The

Board of County Commissioners of Howard County, Maryland

BCC Case No. 506

In the Matter of the Petition of Howard Research & Development Corporation and Columbia Industrial Development Corporation, for an Amendment to the Zoning Regulations of Howard County

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Opinion and Order with Regulation 14A.
(Dated October 15, 1968)

Howard Research and Development Corporation and Columbia Industrial Development Corporation petitioned the Board of County Commissioners under Section 33 of the Zoning Regulations of Howard County for an amendment to the Zoning Regulations so as to add a new section thereto, to be called "Industrial Development (ID) District", and proposed to be Section 14A thereto.

After proper notice as required by the Zoning Regulations, a hearing was held at 1:30 P.M. on October 11, 1968; all members of the Board were present and participated in the hearing and in this decision.

The Petitioners produced testimony to show that large industrial companies find it economically necessary to have, at one location, an integrated system of industrial processes devoted to the manufacture and distribution of a group of related products. Many of the industrial uses required in such

a large operation do not fit into any single existing zoning classification. These various manufacturing processes forming a single industrial complex must, for reasons of efficiency and economy, be planned and developed as a unit. The amount of land required is substantial; and if the industrial user is to protect the surrounding community from noise, congestion, and the effects of waste disposal, the land requirements are much larger.

Experts testified that properties already zoned for manufacturing uses in the County were not available in sufficiently large tracts to accommodate such industrial companies. Further expert testimony was introduced to show that the smaller tracts available also would not permit the overall planning and development control necessary to provide, first, employment centers both attractive and pleasant for the employees, and, second, sufficient insulation from and protection for surrounding properties.

Protestants appeared and testified in opposition to be proposed amendment on the grounds that they were unsure exactly what industrial uses were permitted in the proposed ID District. Other persons, and not connected with the Petitioners, appeared and testified in support of the adoption of the proposed amendment on the ground that its adoption would be in the best public interest.

The Board, after carefully reviewing and considering all the evidence adduced at the hearing, as well as the report of the Planning Commission recommending the adoption of the amendment, finds that the adoption of the proposed amendment, with the changes discussed below, is in the public interest and will promote the health, safety, morals, and general welfare of the County.

Several changes were made by the Board in the proposed amendment:

1. As proposed, the ID District could be designated by the Zoning Authority during a comprehensive revision of the Zoning Map of the County, thus defining an ID District which may or may not be in single ownership, or if in single ownership at the time, may or may not remain so. This would seem to be in conflict with the requirement that an ID District be applied for by persons owning the entire tract. The Board believes that the public interest would be better served if the District is created only after a petition by a person or persons meeting the requirements of Section 14A.

2. The Planning Commission recommended that certain uses permitted in connection with manufacturing operations conducted on the site be not located any closer than 1,000 feet of any property line. The Board reduced this requirement to 300 feet of any property line because within a 300 acre tract it is conceivable that if the 1,000 foot limitation were enforced, the remaining area would be for all practical purposes unusable. The 300 foot setback is common to other zoning restrictions in the County's regulations and to certain restrictions in the Public Local Law and will not unduly penalize a smaller ID District. At any rate, the petition to create an ID District must include a preliminary plan of development showing all uses and processes, and those deemed objectionable or as adversely affecting surrounding properties, may be required by the Board of County Commissioners to have more stringent setbacks.

3. The Board adopted the Planning Commission requirement adding Section 14A.01155 requiring the approval of the Board of Zoning Appeals for certain uses not listed in this Section 14A.

4. The Board generally adopted the recommendations of the Planning Commission as to lot coverage, required yards, off-street parking requirements, and waste product disposal.

5. The findings of fact required before the Board of County Commissioners may grant an application for reclassification to an ID District were amplified to conform to those findings generally specified as required by the Court of Appeals. The Appeal provisions were changed to conform to the rules of court providing for appeals from administrative agencies.

Now, therefore, be it RESOLVED AND ORDERED, This 15th day of October, 1968, that the Zoning Regulations of Howard County be and they are hereby amended by the adoption of a new Section 14A to follow immediately after Section 14, and to read as follows in the attached Section 14A–Industrial Development Districts, and be it further ORDERED that the Zoning Commissioner of Howard County shall incorporate the said amendment into the Zoning Regulations to become effective this 15th day of October, 1968.

BOARD OF COUNTY COMMISSIONERS

HARRY T. MURPHY,

Chairman.

ALVA S. BAKER, JR.

CHARLES E. MILLER

Section 14A.–*Industrial Development (ID) Districts.*

In order to provide for the development of a large, industrial complex under single ownership, ID Districts may be created by petition in accordance with the procedure outlined in this Section 14A.

No ID District shall be created except by the procedure set forth in Section 14A.07 hereof. Each ID District must contain a total area of at least 300 acres. To qualify under this Section any land proposed to be designated as an ID District must be contiguous. Lands which are divided by streets, roads, ways, highways, transmission pipes, lines or conduits, or rights of way (in fee or by easement) owned by third parties shall be deemed to be contiguous for purposes of this Section 14A. No ID District shall be established except upon land the beneficial title to which is in the person, firm or corporation executing the petition referred to in Section 14A.07 hereof. The tenant under a lease having a term of not less than seventy-five years shall be deemed to be the holder of the beneficial title to the land covered by the lease for the purpose of this Section 14A.

14A.01–*Uses Permitted in ID Districts.*

In ID Districts only the following uses of land or buildings shall be permitted:

14A.011–All manufacturing and industrial uses shall be permitted in ID Districts except the following:

14A0111 – A battoir-slaughtering of animals-stockyards-killing or dressing of poultry.

14A.0112–Boiler making or works.

14A.0113–Brewing or distilling of alcoholic beverages.

14A.0114–Brick yard or kiln.

14A.0115–Creosote treatment or manufacture.

14A.0116–Dismantling of automobiles, salvage, storage, or sale of used automobile parts whether within a building or on an open parcel of land.

14A.0117–Distillation of coal, wood, bones or tar.

14A.0118–Distillation of spirits of turpentine or varnish.

14A.0119–Fat rendering.

14A.01110–Fertilizer manufacture.

14A.01111–Fireworks or explosive manufacture or storage.

14A.01112–Fish canning, curing, grinding or smoking.

14A.01113–Flour, grist or grain mills.

14A.01114–Fuel oil manufacture–or refining.

14A.01115–Foundries (except in connection with manufacturing conducted on the site which shall not be located within 300 feet of any property line).

14A.01116–Gasoline manufacture.

14A.01117–Hair factory.

14A.01118–Incineration or reduction of garbage (except in connection with manufacturing operations conducted on the site which shall not be located within 300 feet of any property line).

14A.01119–Iron, steel or copper works or foundries (except in connection with manufacturing operations conducted on the site which shall not be located within 300 feet of any property line).

14A.01120–Junk storage, handling or sale (except salvage and waste disposal in connection with manufacturing operations conducted on the site which shall not be located within 300 feet of any property line).

14A.01121–Lamp black manufacture.

14A.01122–Lime, cement, concrete or plaster of paris manufacture to be used off the site.

14A.01123–Lime kiln.

14A.01124–Manufacture or refining of petroleum or asphalt or any of their products.

14A.01125–Ore dumps, or elevators or ore reduction.

14A.01126–Paint, oil, varnish, lacquer, shellac or turpentine manufacture.

14A.01127–Paper or pulp manufacture.

14A.01128–Planing mill.

14A.01129–Plastic, pyroxylene, including celluloid manufacture (except in connection with manufacturing

operations conducted on the site which shall not be located within 300 feet of any property line).

14A.01130–Potash works.

14A.01131–Poudrette works.

14A.01132–Pulverising charcoal or coal for sale to third parties.

14A.01133–Raw hides or skins storage.

14A.01134–Refining of metals (except in connection with manufacturing operations conducted on the site which shall not be located within 300 feet of any property line).

14A.01135–Refuse dumps or sanitary fills.

14A.01136–Land fills (except in connection with manufacturing operations conducted on the site).

14A.01137–Rubber, caoutchouc or gutta percha manufacture.

14A.01138–Rubber manufacture from seude materials.

14A.01139–Quarries.

14A.01140–Sewage disposal plant–except for uses connected with and situated on property and subject to approval of the Howard County Health Officer.

14A.01141–Shoddy manufacture and wool scouring.

14A.01142–Smelting.

14A.01143–Soap manufacture.

14A.01144–Soda or washing compound manufacture.

14A.01145–Starch, glucose or dextrine manufacture.

14A.01146–Steam or drop hammer forge plants (except in connection with manufacturing operations conducted on the site which shall not be located within 300 feet of any property line).

14A.01147–Stone crusher.

14A.01148–Sugar refinery.

14A.01149–Tallow, grease or lard manufacture or refining.

14A.01150–Tannery.

14A.01151–Tar distillation.

14A.01152–Tar roofing or tar waterproofing manufacture.

14A.01153–Vinegar manufacture.

14A.01154–Yeast plant.

14A.01155–However, those uses not listed above, requiring the approval of the Board of Zoning Appeals under Section 30.01 of these Regulations, may be allowed only with approval of the Board of Zoning Appeals.

14A.012–All business, commercial and retail uses permitted under any section of these Regulations (except uses

permitted only in T-2 Districts) are permitted in ID Districts, provided that such uses are restricted to services, products and facilities made available to agents, officers or employees actually working on the site, or business invitees of the owner of the site and are not made available to the public generally.

14A.013–All retail uses permitted in B-1 and B-2 Districts under these Regulations are permitted in ID Districts, provided that (i) the products sold are either manufactured on the site or are sold as parts or accessories to products manufactured by the Owner of the site at the site or elsewhere and (ii) that any service facilities are limited to the repair and/or service of products manufactured by the Owner of the site at the site or elsewhere.

14A.01–*Height Regulations.*

No building or any part thereof shall be erected or extended so as to exceed a height of 150 feet. In determining the height limitations of structures other than buildings, the provisions of Sections 21.021 and 21.022 shall apply, except that the requirement of approval by Federal and State aviation authorities shall not be applicable unless any structure exceeds 200 feet in height.

14A.03–*Area Regulations in ID Districts.*

14A.031–*Required Size of Lot.*

No tract of land containing less than 300 acres under one ownership shall be zoned as an ID District. Subject to the requirement that a plant site zoned as an ID District can never be smaller than the minimum of 300 acres, surplus land over and above this said minimum amount may be sold by the owner, provided, however, that land so sold and conveyed shall be, at the time legal title is transferred deemed to be

zoned M-R, as defined in these Regulations, and its development shall be controlled by and in accordance with the procedures of Section 14 of these Regulations. Any such sale shall be reported to the Zoning Commissioner so that the Zoning Map may be changed to reflect the zoning change.

14A.04–*Coverage of Lot and Required Yards.*

14A.041–*Coverage of Lot.*

The provisions of Section 14.042, as amended from time to time, shall be applicable to ID Districts.

14A.042–*Required Yards.*

No permanent manufacturing building or permanent manufacturing accessory building shall be located less than 300 feet from the boundary of a Residential District devoted to a residential use: and no permanent building or permanent accessory building shall be located less than 150 feet from any property line or from an existing or proposed public road or highway; except that if the said building exceeds 50 feet in height but is less than 101 feet in height, it shall not be located any closer than 200 feet from any property line or from an existing or proposed public road or highway; and, further, except that if the said building exceeds 100 feet but is less than 151 feet the setback from said roads and highways shall be a minimum of 250 feet.

14A.05–*Off-street Parking Requirements.*

Hard surface parking areas shall be provided in sufficient size to permit the parking entirely on the tract zoned ID of all automobiles, buses, trucks and other motor vehicles used to bring employees, business invitees and other persons visiting the site, as well as all freight and other materials being

brought to or from the site. Off-street parking requirements ahll be subject to the provisions of Section 23.01 of these Regulations, except where a proposed parking area is to be built upon within a five-year period, and except for occasional, temporary parking requirements for accessory buildings located not closer than 300 feet from any property line or public road or highway. All parking areas located within 300 feet of the property line or of the right of way of a public road or highway, not including interior roads, shall be landscaped with screen plantings not less than six feet in height at time of planting. Such landscaped areas shall be maintained at all times.

14A.06–*Waste Products.*

The provisions of Sections 16.07 and 16.08 shall apply to ID Districts, except that waste products may be discharged into the atmosphere, any stream, river or any body of water provided the same meets treatment standards of general application by the appropriate, Federal, State or County Agency, whichever standards are higher.

14A.07–*Procedure for Creating ID Districts.*

14A.071–ID Districts may be created by petition to the County Commissioners of Howard County for amendment to the zoning map in accordance with the procedure set forth in Section 33 of these Regulations.

14A.0712–A petition for creating an ID District shall be filed with the Zoning Commissioner. It shall be accompanied by three or more copies of preliminary development plans showing the proposed primary use of the tract, existing topography, proposed grading, drainage, sediment control measures, screening, planting, the extent, general location and character of proposed structures, uses and open area, ingress

and egress. A copy of such preliminary development plan shall be transmitted by the Zoning Commissioner to the Planning Commission and the Metropolitan Commission of Howard County for recommendation and report on the proposed project to the County Commissioners.

14A.0713–After a public hearing, the County Commissioners shall pass an order approving the petition, approving the petition with conditions incorporated therein or disapproving the petition. No petition for the creation of an ID District shall be approved unless the County Commissioners affirmatively find that:

(i) based upon reasonable assurances (as, for example, but not limited to, contracts of sale, testimony at the hearing by the intended industrial user, etc.) acceptable to the County Commissioners, the tract after zoning as an ID District will be used as an industrial development under one ownership;

(ii) that the intention to develop the tract is bona fide;

(iii) that the granting of the petition for rezoning will be in the public interest and will promote the public health, safety, morals and general welfare;

(iv) that the granting of the rezoning and the industrial development of the tract is not inconsistent with and is compatible and harmonious with the comprehensive plan of development of the County;

(v) that the granting of the rezoning and development in accordance with the preliminary development plan will not adversely affect surrounding properties; and

(vi) that the tract in question, viewed in relation to surrounding land uses, the availability of public utilities, roads, highways, railroads, is suitable for the development of a large industrial complex.

14A.0714—Any appeal from the action of the Board of County Commissioners on the petition shall be made in accordance with the Maryland Rules providing for appeals from administrative agencies.

14A.08—As used herein, the terms "owner" and "single ownership" shall be taken to mean, in the case of a corporation, that a parent corporation and all of its wholly-owned subsidiaries shall be deemed to be one owner and, in the case of individuals, that partnerships, joint ventures and other associations of individuals involving joint ownership of property shall be deemed to be one owner.

APPENDIX E.

Certification of Publication Case 506

CERTIFICATION OF PUBLICATION FROM CENTRAL MARYLAND PUBLICATIONS

This Is To Certify that the annexed advertisement of BCC No. 506 was inserted in The Central Maryland News, a weekly newspaper published in Howard County, Maryland, once a week for 2 weeks before the 11 day of Oct., 19...., that is to say the same was inserted in the issues of 10/3/68 and 10/10/68.

CENTRAL MARYLAND PUBLICATIONS

By: SONIA B. SIMPSON.

CERTIFICATE OF PUBLICATION FROM CENTRAL PUBLICATIONS, INC.

Office of The Ellicott City Times
Ellicott City, Md., October 3, 1968

This Is To Certify, that the annexed advertisement of Zoning–Howard Research & Development Corp. No. 506 [Not Printed Here] was inserted in The Ellicott City Times, a weekly newspaper printed and published in Howard County, Maryland, once a week for two weeks before the 11th day of October 1968, that is to say the same was inserted in the issues of Sept. 26 & Oct. 3, 1968.

STROMBERG PUBLICATIONS, INC.,
Publisher.

By: C. CURRAN.

APPENDIX F.

Petition of Howard Research Case 511.

BCC CASE NO. 511

PETITION OF THE HOWARD RESEARCH AND DEVELOPMENT CORPORATION AND COLUMBIA INDUSTRIAL DEVELOPMENT CORPORATION

To Board of County Commissioners of Howard County

Case No.: 511
Date: October 16, 1968

1. The undersigned, The Howard Research and Development Corporation and Columbia Industrial Development Corporation, its wholly owned subsidiary, bodies corporate of the State of Maryland (hereinafter jointly referred to as "Petitioner"), are the beneficial owners of several parcels of land lying in the Sixth Election District of Howard County. All said parcels form one contiguous tract of land having a total area of 1,087 acres of land, more or less. A survey showing the location of the individual parcels and the perimeter of the entire tract is attached hereto as Exhibit 1 and made a part hereof. Said 1,087 acre tract of land is hereinafter referred to as the "Proposed Industrial Development Site".

2. Attached hereto as Exhibit 3 and made a part hereof is a list showing the names of the previous owners of each of such parcels and the dates of acquisition and, in the case of three properties, the names of the contract sellers under contracts with Petitioner or its nominee.

3. A substantial portion of the Proposed Industrial Development Site is presently used for sand and gravel

operations and, in recent years, has been used for quarry operations as well. The balance is used primarily for residential purposes.

4. The Petitioner hereby petitions the Board of County Commissioners to amend the Howard County Zoning Map so as to reclassify the Proposed Industrial Development Site from the Zoning Districts, as shown on Exhibit 1, presently applicable to the respective individual parcels to an Industrial Development District, pursuant to the applicable provisions of the Zoning Regulations of Howard County. The reason for the proposed change in zoning is to create an Industrial Development District on land well suited for industrial development of the type intended under the zoning classification of Industrial Development District.

5. There is filed herewith and incorporated herein as Exhibit 2 a preliminary development plan as required by the provisions of Section 14A.0712 of the Zoning Regulations of Howard County prepared by and for the General Electric Company (hereinafter referred to as "General Electric"), the optionee of the Proposed Industrial Development Site under an agreement with Petitioner. As will be developed during testimony at the hearing, Petitioner believes and therefore avers that the General Electric Company will purchase the Proposed Industrial Development Site if the proposed zoning is granted and if General Electric Company is assured of adequate services to the site. Upon acquisition of the site, General Electric Company has a bona fide intention to use and develop the same as an industrial development under its sole ownership. A further statement of the intended use of the subject prperty is set forth in the text of Exhibit 2 annexed hereto.

6. Because of physical buffers existing as a result of topography, road systems, existing tree cover and set backs

required under Section 14A of the Zoning Regulations no adverse effect will be created on lands surrounding the Proposed Industrial Development Site if the within zoning request is granted and the subject property is developed in accordance with the preliminary development plan.

7. The Proposed Industrial Development Site, when viewed in relation to surrounding land uses, availability of public utilities, availability of roads and highways and availability of railroad service, is suitable for the development of a large industrial complex. Based on the assurances of the Howard County Metropolitan Commission, Petitioner understands that water and sewer facilities can be brought to the site which will be adequate to supply the plant with the water required and to handle the removal of sewerage and waste materials. The construction of Interstate Highway 95 and the planned construction of new Maryland Route 175 and new Berger Road, all as shown in Exhibit 2, insure the availability of adequate road access.

8. The granting of the rezoning and the industrial development of the subject property will not be inconsistent with and will be compatible and harmonious with the comprehensive plan of development of Howard County.

9. Since the Industrial Development District provided for in Section 14A of the Zoning Regulations of Howard County is a newly created "floating" zoning district, it is not legally necessary to demonstrate either a mistake as to the current zoning of the site or a change in the character of the neighborhood. However, as will be shown at the hearing, there has in fact been a substantial change in the character of the neighborhood.

10. The granting of this petition will be in the public interest and will promote the public health, safety, morals and general welfare of Howard County.

11. The undersigned agrees to furnish such additional plats, plans or other data as may be necessary or required by the Zoning Commissioner and/or the Board of County Commissioners in connection with the filing of this petition.

12. The undersigned further agrees to pay all costs involved in this petition in accordance with the schedule of fees as set out in "Instruction Sheet and Requirements for Filing Petitions" in the amounts indicated hereon below.

13. The undersigned further agrees to install and maintain property posters as required and to remove the posters within three days after the hearing.

14. The undersigned further agrees that the newspaper advertising requirements of Section 33.01 of the Howard County Zoning Regulations will be inserted and paid for by the Petitioner (said advertisement to be first submitted to the Zoning Commissioner for approval of the adequacy thereof before insertion in any newspaper) and further agrees to submit an approved certification of the text and publication date(s) of the approved advertisement at or before the time of the hearing.

15. The undersigned certifies that no petition for the same, or substantially the same, proposal as herein contained for the same premises as are the subject of this petition has been disapproved by the Board of County Commissioners within eighteen months of the date of this petition.

16. Owner–The Howard Research and Development Corporation and Columbia Industrial Development Corporation
Columbia, Maryland 21043
Telephone: 737 7700

17. Applicant–the above owner.

18. Counsel–John Martin Jones, Jr.
900 First National Bank Building
Baltimore, Maryland 21202
Telephone: 539 2530

Respectfully submitted,

THE HOWARD RESEARCH AND
DEVELOPMENT CORPORATION

COLUMBIA INDUSTRIAL DEVELOPMENT
CORPORATION

JOHN MARTIN JONES, JR.,

Counsel for Petitioner.

APPENDIX G.

Howard County Planning Commission Report.

October 30, 1968

Board of County Commissioners
of Howard County
Court House
Ellicott City, Maryland 21043

Re: BCC Case No. 511

Gentlemen:

At the regularly scheduled meeting held on Wednesday, October 23, 1968, and at a special meeting on Tuesday, October 29, 1968, the Planning Commission considered the petition of the Howard Research and Development Corporation and the Columbia Industrial Development Corporation, for an amendment of the Zoning Map of Howard County so as to reclassify 1,087 acres of land from R-20, M-1 and N-T Districts to an I-D District, located southwest of Md. Route 175, east of Oakland Mills Road, northeast of Route 32 and west of proposed Interstate Route 95.

The Planning Commission recommended approval of the petition requesting rezoning of the subject property to the Industrial Development District in accordance with the following report and conclusions:

Location of Property: The subject property is located northwest of the proposed right-of-way of Interstate 95, southwest of Md. Route 175, southeast of Oakland Mills Road and northeast of the F.C.C. property in the 6th E.D.

Request:

Present Zoning:

R-20 (One & two family residential) District
M-1 (Manufacturing Light) District
N-T (New Town) District

Proposed Zoning: I-D (Industrial Development) District

Area Applied For: 1087± acres total.

Accordance With The General Plan: The proposed zoning change *is not* in accordance with the Howard County General Plan, adopted July 20, 1960.

Zoning History:

Case Nos.:	337, 412, and 451 (unscheduled)
Request:	M-1; N.T.; and M-2.
Action:	All granted, except 451 which a public hearing has not been held.

Zoning Pattern: The subject property is bounded on southwest and south by R-20; on the southeast by M-R and R-20; on the east, north and west by N-T.

Field Inspection: A major portion of the subject property is occupied by a quarry (sand and gravel operations). The remaining area of the property is mostly undeveloped.

Findings:

1. The petitioner's request is not in accordance with the General Plan of Howard County, adopted on July 20, 1960.

2. Public water and public sewer can be made available to the subject property with a developer's agreement according to the Howard County Metropolitan Commission.

3. North, northeast and northwest of the subject property is land owned by the Howard Research & Development Corp. under the New Town District and the area adjacent to the subject property (Lark Brown Road) is classified in the Employment Center Use. East of the subject property is the right-of-way of relocated Md. Route 175 and I-95, both of which are now under construction. To the southwest is the property of the Federal Communications Commission, approximately 270 acres.

4. There are homes adjacent to the subject property on the west.

5. Most of the petitioner's land was an active quarry site for sand and gravel operations with much of the vegetation and top soil removed by the previous owner.

6. The subject property is bounded on three sides by proposed major highways: Interstate 95, an eight-lane freeway now under construction; Relocated Md. 175 (Little Patuxent Parkway) which is partially under construction; and Relocated Berger Road, a primary highway to be constructed as part of the development of Columbia.

7. Railroad facilities are planned to be made available to the subject property by the B.&O./C.&O. Railroad along the southern boundary of the property.

8. The Preliminary Development Plan of the General Electric Appliance Park II, revised as of October 29, 1968, and the supporting materials for Scheme 25 B3, which include among other exhibits: a three-dimensional model; a plan for existing remaining tree cover and proposed areas of planting; a plan for vehicular circulation, access and parking; and a series of ground level profiles of the proposed facilities at selected locations from the perimeter of the subject property; have been submitted by the petitioner to satisfy the requirements imposed by Section 14A of the Zoning Regulations as to the development of the subject property.

Conclusion:

1. The Planning Commission believes that the petitioner's proposal for a 1,087-acre Industrial Development District at this specific location, adjoining Interstate 95 and Relocated Route 175, is highly desirable and the best use of land because of location within the "transportation corridor" between Baltimore City and Washington, D.C. and the opportunities for excellent highway and railroad access to the site.

2. The location of this site and the requirements of the Industrial Development District fulfill many of the *Industrial Assumptions* and *Industrial Policies* stated in the General Plan of Howard County, adopted on July 20, 1960, pages 56 and 58, as follows:

> "Howard County, due to its strategic geographic position between two expanding Metropolitan areas (Baltimore-Washington), will be sought after for site locations, by industrial, large commercial, and research type firms. Howard County takes on a new importance from an industrial viewpoint if it is realized that the County will be in the center of two Metropolitan areas totaling approximately six million

population by 1980. From the information available, the Planning Commission and their industrial planning consultant accepted the view that Howard County will have a large industrial growth.

Howard County has an important location advantage between major eastern metropolitan markets. This will make it possible for production and distribution facilities, trucking terminals and wholesaling facilities to develop in the County.

Industry can be an asset to the County if site locations are properly planned. If sites are poorly located the demand for new roads, schools, utilities, police protection and other facilities to serve the sites will require more funds than the tax revenue from the industrial sites would provide."

"Industry should be located near freeways, major highways or have access to a major highway. Space for industry should be provided near railroads, but a major highway should still serve the area. In most cases industry should be located independent of residential and commercial concentrations. Industrial parks should be planned and developed as a subdivision, the plants sited in an orderly manner within the area and related properly to the circulation network and other plants. Industries should attempt to make their development attractive by utilizing architects with imagination and talent in designing the buildings. Industrial buildings can and should be functional as well as attractive to view. It is as important for people to work in pleasant surroundings as it is for them to reside in attractive residential areas. Trees and landscaping should be utilized throughout an industrial park or large industrial center, and as a screen to nearby commercial or residential developments."

3. The subject property adjoins areas either primarily undeveloped or in low intensity non-residential uses and,

therefore, will not cause intensive impact on large residential areas in the County through generation of vehicular traffic.

4. Therefore, the Planning Commission recommends approval of the proposed zoning of the subject property to the ID District because of the outstanding location of the proposed site and the successful site planning applied to the subject property as shown by the Preliminary Development Plan titled "General Electric Appliance Park II," revised October 29, 1968, and the supporting materials for Scheme 25 B3, all of which fulfill the requirements of Section 14A of the Zoning Regulations of Howard County.

If you have any questions concerning the above report please contact this office at your convenience.

Sincerely yours,

THOMAS G. HARRIS, Jr.,
Planning Director.

TGH,JR./sal

cc: Howard Research & Development Corp.

APPENDIX H.

Testimony – Case 511.

HEARING TRANSCRIPT

Before The Board of County Commissioners of Howard County

Case No. 511

In the Matter of the Application of The Howard County Research And Development Corporation and The Columbia Industrial Development Corporation for the Rezoning of 1,087 Acres From An R-20, M-1 and NT Zoning Districts to an ID Zoning District.

Thomas G. Lloyd, Legal Counsel to The County Commissioners;

John Martin Jones, Jr., Petitioner's Counsel;

T. Thornton Murray, Protestant's Counsel.

(Mr. Lloyd) Mr. Chairman, this matter is before the Board of County Commissioners upon petition by the Howard Research and Development Corporation and Columbia Industrial Development Corporation, Petitioners, to amend the Zoning Map of Howard County and it is brought to your attention under Section 33 of the Zoning Regulations. In accordance with the requirements of Section 33 a notice of the time and place of this hearing (T. 2) was published in the two local papers of Howard County and for the record these

are the Certificates of Publication. The Howard County Times in the issues of October 17 and 24, 1968 and in the Central Maryland News of October 24 and 31, 1968.

* * * * * * * *

(T. 4) (Mr. Murray) A week or two weeks. I would like to at this time point out to the Commission that I was retained to represent this Association at approximately 10:00 O'clock Wednesday afternoon. I called Mr. Lloyd 10:00 Thursday morning and asked for a reasonable delay in order to provide a proper case to put before the Commission. I was informed at that time that due to a local law of a Lame Duck Commission that I could not have a postponement. That this had to be tried before this Commission before Tuesday, is that correct sir?

(Mr. Lloyd) That is the right interpretation of the law Mr. Murray.

(Mr. Murray) Is this what I was told, I'm not interpreting.

(T. 5) (Mr. Lloyd) I'll get the statute if you want to look at it.

(Mr. Jones) The statute is in evidence. I would also register an objection into that, independent of that statute, that the same group that retained Mr. Murray last night, or whenever it was, protested earlier in the proceedings. I believe it is the same group, the same individuals, with a different Attorney. Now the fact that they retained somebody on the eve of the trial is no reason to postpone the hearing in any event, but apart from the statute which is as you state.

(Mr. Miller) Mr. Lloyd it has been the policy of this Board and previous Boards whenever a hearing is scheduled

and advertised and set for the hearing there was no postponement. What would happen, the Attorneys would run in at the last minute and ask for a postponement ten minutes before the hearing to see if there were any protestants and whenever a hearing was scheduled and set we always went ahead with the hearing.

(Mr. Murray) Regardless for the reason of the late appearance of the Attorney?

(Mr. Miller) But you have things prepared, so do these people.

(Mr. Murray) It would be impossible to prepare a case of this magnitude in a day.

(Mr. Miller) Lots of people take off from work to come to these hearings. It wouldn't be fair to those people who take off from work.

(Mr. Murray) I stand here now sir with the protesters, showing a list of signatures of 75 people to, who claim that their homes and property will be diminished in value.

(Mr. Lloyd) Mr. Murray, I think that is the merit of your (T. 6) case and you can bring that out. Your objection now is that you asked for a postponement on two grounds. One that the BCC 451 is pending and the other is that you have had inadequate time to prepare for this and I believe–

(Mr. Murray) Nor to secure experts and make a study of the area and what is proposed there as to the devaluation of the Association's homes and livelihood. Yes, those are the two grounds I make my objection on.

(Mr. Lloyd) Very well then I suggest the Board overrule it. Keep his objection in the record. Overruled for the reason

that the Association which retained you had adequate time to retain somebody and the rights of the people who have come to this meeting also in protest and in support and the petitioner will be projudiced if the hearing doesn't continue. It has been the policy of this Board not to postpone and we have a further liability towards postponing at this time on account of our – of the local law. Those are the reasons for the record and if you want your name entered in the record–

(Mr. Murray) Yes I do for the same reasons that the Board is giving for it and also the policy of this particular Board not to postpone a case for any particular reason as Counsel has – because I did ask a question specifically of Mr. Miller.

(Mr. Lloyd) We gave you the reasons. They are in the record. Your objection is in the record and you represent who?

(Mr. Murray) Waterloo Civic Association.

(Mr. Lloyd) Have you had a copy of the Planning Commission Report?

(T. 7) (Mr. Murray) No I have not. (Mr. Lloyd gives Mr. Murray a copy of the Planning Commission Report.)

(Mr. Lloyd) Have you seen a copy of the Metropolitan Commission Report?

(Mr. Jones) I have not. (Mr. Lloyd gives Mr. Jones a copy of the Metropolitan Commission Report and Mr. Murray also looks at it.)

(Mr. Murray) Mr. Lloyd, this lady here had her hand up. (Mrs. Ella Mae Bowie, Waterloo Civic Association.)

(Mrs. Bowie) I'd like to make it known why we were so late in contacting Mr. Murray. We had another Attorney to represent us at the other hearing and he said that he would not represent us for this one because it was a foregone conclusion that it was already predecided and that is his reason for not representing us now and that is why I was so late in contacting Mr. Murray.

(Mr. Lloyd) Mr. Chairman, may I make a comment on that. I don't think that that Attorney is authorized to speak for this Board and I would say that as far as I know, he is in error.

(Mrs. Bowie) Nevertheless, we were not able to obtain Legal Counsel.

(Mr. Lloyd) But I think your Attorney may have misled you on that.

(Mrs. Bowie) That's our fault?

(Mr. Lloyd) I would suggest that the Board make some statement for the record that they have not–

(Mrs. Bowie) I thought a lawyer's job was to protect the people.

(Mr. Lloyd) Well I hope that's our job.

(Mrs. Bowie) Then why couldn't we obtain Legal Counsel?

(T. 8) (Mr. Lloyd) You have Legal Counsel.

(Mrs. Bowie) Outside the County. We had to go out of our own County to get someone to help us protect our homes and our property and our families.

(Mr. Lloyd) Well–

(Mrs. Bowie) Now you tell us we can't because of a Lame Duck something that is just simply, it's not, it's just not valid.

(Mr. Lloyd) Well you come here today to, your're both here to protest? (Mr. and Mrs. Bowie).

(Mrs. Bowie) Right.

(Mr. Lloyd) And you are represented?

(Mrs. Bowie) Right.

(Mr. Lloyd) And the Board has not made any decision on this that I know of.

(Mr. Murphy) We certainly have not. That's why we're sitting here to hear both sides and try to make the proper decision. Whether we are right or wrong, I certainly have not made an decision whatsoever and I fell that my colleagues are in the same position.

(Mr. Lloyd) The Howard County Metropolitan Commission Report. (The original documents are given to the Commissioners.) Copies of the Petition.

(Mr. Miller) Does Mr. Murray have a copy of the Planning Commission Report?

(Mr. Lloyd) Yes he does. The State Roads Commission Report. Mr. Chairman, with your permission before we begin I would like to make a statement as to the conduct of the hearing. I think we passed out to most everybody copies of our hearing procedure. I'd like to say that in this every citizen who appears here and wants to be heard (T. 9) has a right to

be heard. The County Commissioners in their discretion, however, have the right and the duty to exclude some that may be repetitious or argumentative. The Board has been very liberal in granting everyone the right to be heard. The hearing, now the hearing is conducted under the rules of the Administrative Procedures Act and not the Technical Rules of Evidence as in a court. These rules permit a lot of hearsay testimony and you'll find that on most objections that the Board of County Commissioners seldom rule to exclude any testimony. They are permitted to do that under the law of Maryland.

(T. 84) End of Petitioner's testimony.

(Mr. Murray) If it please the Board, I would like at this time to make a statement to this effect. I, again ask for time to prepare a case in which I think is wholly necessary since the, my opponents have taken four and one half months to put their evidence before you and I've had approximately a day and a half. But I have got the people who live in the area here. But I do wish to make a formal request again for a postponement for a reasonable amount of time to get my experts in.

(Mr. Jones) I oppose it.

(Mr. Murphy) What do you consider a reasonable amount of time? We are willing to listen to everything within reason. I want to tell you Mr. Murray that I have lived in the First District for twenty-six years, just four or five miles from this place. I have run over each and every one of these roads. I could tell you the houses of the entire area. I have every consideration for the problems these people are faced with, but for you to come here and draw out some of the points that you have made. I, personally, think that the, I question myself.

(Mr. Murray) You question what yourself?

(Mr. Murphy) You're from Baltimore City and the good people of Howard County have their own ways of living. I'm sure that some of your clients have even thought maybe that you have asked some questions that were not germane either.

(Mr. Murray) That may be Mr. Commissioner. I'd like to (T. 85) answer that myself. I think that is a question for my clients to tell me. I am presenting what I have to do and being forced to do on such a short notice under objection.

(Mr. Murphy) Well I grant you that and I have every respect for your position.

* * * * * * * *

(Mr. Lloyd) I can give him the legal ruling on this and I think we'll have to deny that for the reasons that I gave before. That there are a lot of people here who have petitioned this Board to hear this. It has been a matter of public notice in this County for several months. It has met all the requirements of our Zoning Regulations. Your clients knew about this for a long period of time.

(Mr. Murray) They've had difficulty in obtaining counsel.

(Mr. Lloyd) They didn't ask every local counsel in Howard County.

(Mr. Murray) You've asked every counsel?

(Mr. Lloyd) And they did–

(Mr. Murray) I don't know how many counsel you have here, but I know for a fact that three were approached and three gave answers. They did not want to be involved.

(Mr. Lloyd) I think they did not cover our 35 members of the local bar.

(Mr. Murray) One of them told me point blank that he had received business from them in the past, from Mr. Rouse, (T. 86) and expected to get it in the future and that is why he didn't want to be involved.

(Mr. Lloyd) That is one out of three.

(Mr. Murray) And I was told before hand that I would not get the postponement and none of my objections would be considered and I would be overruled and I do want that in the record.

(Mr. Lloyd) I think that is wrong for the record and I'd like to oppose that. I told you that we couldn't give you a postponement because of our Code of Local Laws. I am denying this motion for postponement on the grounds that the other people have their rights here too and they will be prejudiced.

APPENDIX I.

Opinion and Order of the Board of County Commissioners.

Before The
Board of County Commissioners of
Howard County, Maryland

BCC Case No. 511

In the Matter of the Petition of the Howard Research And Development Corporation and The Columbia Industrial Development Corporation for an Amendment to the Zoning Map of Howard County

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Howard Research and Development Corporation and Columbia Industrial Development Corporation petitioned the Board of County Commissioners under Section 33 and Section 14A of the Zoning Regulations of Howard County for an Amendment to the Zoning Map so as to reclassify some 1,087 acres from existing R-20 (one and two family residential) District, M-1 (manufacturing light) District, and N-T (new town) District to an I-D (industrial development) District. The subject property is bounded on the southwest and south by R-20; on the southeast by M-R (Manufacturing-Restricted) and R-20; and the east, north and west by N-T. A major portion of the subject property is occupied by a quarry (sand and gravel operations). The remaining area of the property is mostly undeveloped. The subject property is located in the Sixth Election District of Howard County lying southwest of Maryland Route 175, east

of Oakland Mills Road, northeast of Route 32 and west of proposed Interstate Route 95.

After proper notice and posting of the subject property as required by the Zoning Regulations, a hearing was held at 1:30 P.M. on November 1, 1968; all members of the Board were present and participated in the hearing and in this decision. The owner and petitioner was represented by John Martin Jones, Jr., Esq.; the Waterloo Civic Association appeared in protest and was represented by T. Thornton Murray, Esq.; other citizens appeared, both in favor of the granting of the rezoning and in opposition thereto.

We must first consider the objection made at the beginning of the hearing and renewed from time to time by the protestant, Waterloo Civic Association, to the Proceeding and its request for a postponement of the hearing on the ground that counsel had only recently been retained and had insufficient time to prepare for the hearing, to obtain experts, and to produce expert testimony in opposition to the granting of the rezoning. We note that the general subject, the location and the circumstances of this application for rezoning have been the subject of much public comment in the newspapers for the past several months; that the Waterloo Civic Aassociation appeared, represented by counsel, at the hearing on October 11, 1968, wherein the same Petitioner sought an amendment to the Zoning Regulations to provide for an I-D District and where the property, the subject of this present hearing, was discussed collaterally; that 15 days' notice of this present hearing was published in both newspapers of general circulation in Howard County as required by the Zoning Regulations; and that the subject property was properly posted as further required by the Regulations. These facts constitute, in our opinion, adequate and sufficient public notice of the subject of this hearing, and for this reason we believe that the opponents, and especially the Waterloo Civic

Association, had ample time to retain an attorney and such experts as they deemed advisable. We are of the opinion that their rights were not prejudiced by our refusal to postpone this hearing and that it was in the public interest to proceed with the hearing as scheduled. Most other objections made at the hearing to the introduction of certain testimony and the posing of certain questions were based on technical grounds and were overruled because we believe we are not bound by the strict technical rules of evidence and that the public interest requires a full disclosure of all evidence germane to the issue of this rezoning. At any rate, we are of the opinion that the admission of that evidence over objection was not prejudicial to the rights of any of the parties.

James W. Rouse, president of the petitioners, testified to the fact of an option contract with the General Electric Company for the purchase of the subject property, subject to the granting of this rezoning and subject further to certain other conditions. Officers of The General Electric Company, its Manager of Facilities Planning for the Major Appliance and TV Group and its Manager of Construction Operations, testified that The General Electric Company needed to increase its facilities for the manufacture and warehousing of major electrical appliances and had decided to locate such a facility in the east. In deciding upon a location, the Company's requirements were: (a) the availability of a tract of land of approximately 1,000 acres, (b) the availability of sufficient labor, (c) the civic and governmental environment of the community, (d) the tax structure of the community and state, (e) the availability of public utilities such as water and sewerage, electricity, etc., and (f) the availability of communications and transport, especially highways and railroads. Both testified that the subject property fully met all their requirements, that the General Electric Company had a bona fide intent to develop it, subject to this rezoning, and

was fully capable of carrying out its plans. If allowed to proceed, the company planned to employ 12,000 people within 10 years in the facilities described in the Preliminary Development Plan introduced in evidence to satisfy the requirements of Section 14-A of the Zoning Regulations.

The protestant, Waterloo Civic Association and certain members thereof, citizens of the County and adjacent landowners and residents, testified in opposition to the granting of the rezoning on the ground that they believed their property would be adversely affected because of the proposed road changes, school bus rerouting, and additional traffic. They submitted petitions against the rezoning signed by numerous residents living in the general area of the subject property. Other citizens living close to the subject property testified in opposition to the granting of the rezoning on the same grounds and one, Mr. McMullin, testified that he had inquired of Louisville, Kentucky, citizens as to the general reputation of The General Electric Company. He reported that the company's reputation in that area as a corporate citizen was outstanding.

Two citizens and residents voluntarily testified in favor of the granting of the application for rezoning. Both testified that they believed the granting of the rezoning was in the public interest, would promote the general welfare, and would not adversely affect the surrounding property.

Considering all the evidence introduced at the hearing, including the testimony of Mr. Finley and Mr. Pinkard, the report of the Planning Commission recommending approval together with its reasons, the reports of the Metropolitan Commission and the State Roads Commission, and the preliminary plan introduced by the petitioner, we make the following findings:

(a) That the Petitioners' preliminary plan introduced in evidence meets the requirements of Section 14-A of the Zoning Regulations.

(b) That if the petition is granted, the subject property will be used as an industrial development under the ownership of The General Electric Corporation.

(c) That the intent to develop the tract as an industrial development is bona fide and that the parties involved have the resources to develop it in accordance with the preliminary plan introduced in evidence.

(d) That the Petitioner and the parties involved in the proposed development of the subject property have the requisite intent and capability to fulfill their additional contractual requirements, if this rezoning is granted.

(e) That the granting of this rezoning is in the public interest and will promote the public health, safety, morals and general welfare.

(f) That the granting of this rezoning and the industrial development of the subject tract is not inconsistent with and is compatible and harmonious with the comprehensive plan of development of Howard County, as evidenced by the report of the Planning Commission.

(g) That the granting of the rezoning and the development in accordance with the preliminary development plan submitted will not adversely affect the surrounding properties.

(h) That the subject property is suitable for the development of a large industrial complex.

It is, therefore, RESOLVED and ORDERED, by the Board of County Commissioners of Howard County, on this 4th day of November, 1968, that the Petition of the Howard Research and Development Corporation and the Columbia Industrial Development Corporation for an amendment to the Zoning Map of Howard County be, and the same is hereby, GRANTED, and be it FURTHER ORDERED that the Zoning Commissioner of Howard County shall amend the Zoning Map in Accordance with this Order.

BOARD OF COUNTY COMMISSIONERS

HARRY T. MURPHY,
Chairman.

ALVA S. BAKER, Jr.,
Member.

CHARLES E. MILLER,
Member.

APPENDIX J.

Motion to Extend Time For Filing Appellants' Brief and Record Extract and for Postponement of Argument

Appellants, by their attorneys, Earl L. Carey, Jr. and Harry Goldman, Jr., Goldman and Carey, move the Court to extend the time for filing briefs and record extracts in this case, pursuant to Maryland Rule 830 b. and c., and to postpone the Argument in this case, pursuant to Maryland Rule 845 d. and for cause therefor show to The Court, as follows:

1. The Notice of Appeal in this cause was filed February 28, 1969.

2. On March 3, 1969, appellees filed a 12-page Motion to Advance Case for Argument and, after Answer, by Order of the Honorable Hall Hammond, C. J., advanced the time for transmitting the Record on Appeal in the lower Court to March 14th, the time for filing appellants' Brief to April 7th, appellees' Brief to April 18th, and the Argument to the May Session.

3. The case is an extremely "complicated"[1] zoning appeal, from a factual standpoint involving three (3) zoning cases and a Circuit Court decision and Opinion.

4. The Record is voluminous, consisting of a foot and a half of documents and numerous maps and charts. The printed portion of the Record consists of 486 pages, which has been reduced to 429, as a Joint Record Extract. The printer cannot deliver this until April 11th, at the earliest.

[1]This is the language of Chief Judge Macgill, below in his Opinion.

5. The case, although factually complicated, has been marked by extremely hurried decision making, first by the Board of County Commissioners, then by the Circuit Court.

* * * * * * * *

11. Appellants ought to have the *minimum* time prescribed by the Maryland Rules, 30 days from the filing of the Notice of Appeal and 40 days thereafter, to do at least a barebones briefing of this case. That time would be until April 30, rather than April 7, under the present Order. (Maryland Rule 825 and 830.)

12. It is particularly essential that This Court not curtail appellants' rights by not giving them adequate time to brief and argue the case, in the light of the more than extreme speed with which this case has been considered, below.

13. The appellees will not be harmed by this extension, for the following reasons:

(A) Although the land in question is under Option to General Electric Company, conditioned upon obtaining the appealed zoning, there is no deadline date for the expiration of the Option. (None has ever been cited by appellees either.) According to G.E.'s Manager of Construction, J. Bennett Austin, the time for exercising the Option is flexible. He testified:

> "A. We would hope to exercise our option to purchase prior to the end of the year. We would hope to break ground in February and to commence construction of the two first buildings which would be the central warehouse and our range department plan in the spring. If there is delay in exercising, obviously the plan moves back accordingly."
>
> * * * * * * * Galley p. 129

15. The G. E. building program is extremely leisurely and will not reach completion until the "mid-seventies", G. 130.

16. Surely, appellants are entitled to the *minimum* adequate time set by The Rules of this Court, for Briefing this case.

17. To deny appellants the extension herein prayed, appellants say and respectfully contend, is to deprive the appellants of their property without due process of law and denies them equal protection of the laws, contrary to Amendment XIV of the Constitution of the United States and deprives appellants of their property contrary to the Law of the Land, and contrary to Articles 19 and 23 of the Maryland Declaration of Rights.

WHEREFORE, appellants move to extend the time for filing their brief and record extract from April 7th to April 30th, 1969 and to postpone the Argument of this cause from the May term to the June term of this Court.

[Signatures and Service Certificate Omitted]

APPENDIX K.

Order of Court of Appeals of Maryland.

Upon consideration of the Motion of Appellants to Extend Time for filing appellants' Brief and Record Extract and for postponement of Argument, it is hereby, this 1st day of April, 1969, by the Court of Appeals of Maryland ORDERED that the time within which appellants shall file their main Brief be and the same hereby is extended to April 18, 1969, the time within which appellees shall file their main Brief be and the same hereby is extended to April 30, 1969, and it is FURTHER ORDERED that this case be set for Argument at the May Session of this Court.

/s/ Hall Hammond

Chief Judge
Court of Appeals of Maryland

APPENDIX L.

Code of the Public Local Laws of Howard County (Article 14 of the Code of Public Local Laws of Maryland).

An Act Legalizing Code of Public Local Laws of Howard County Edition of 1965

AN ACT to legalize the 1965 Edition of the Code of Public Local Laws of Howard County, being Article 14 of the Code of Public Local Laws of Maryland, published under the direction of the Board of County Commissioners of Howard County and making provisions for the publication, sale and distribution thereof, and authorizing the publication, sale and distribution of annual supplements thereto.

SECTION 1. *Be it enacted by the General Assembly of Maryland,* That the 1965 Edition of the Code of Public Local Laws of Howard County, being Article 14 of the Code of Public Local Laws of Maryland, published under the direction of the Board of County Commissioners of Howard County be and the same is hereby legalized. Said Code shall contain all Public Local Laws relating to Howard County in effect at the completion of the 1965 Regular Session of the General Assembly of Maryland; it shall be deemed and taken in all the Courts of the State and by all Justices of the Peace and Trial Magistrates of the State and by all other public officials of the State and of any political subdivision thereof to be evidence of the Public Local Laws of Howard County in existence at the time of compilation.

* * * * * * *

SEC. 3. *And be it further enacted,* That this Act shall take effect June 1, 1965.

Resolved this 28th day of December, 1965, by the Board of County Commissioners of Howard County that the 1965 Edition of the Code of Public Local Laws, being Article 14 of the Code of Public Local Laws of Maryland, published under the direction of the Board and edited by Lewis Straughn Nippard, Esquire and Robert E. Wieder, Esquire, be, and the same is hereby adopted.

* * * * * * *

(p. 168)

ZONING

343. Zoning districts; designation.
344. Same; procedure, hearings, notice.
345. Board of Zoning Appeals Zoning Commissioner.
346. Appeals from Board.
347. Penalties; other remedies.

343. *Zoning districts; designation.*

(a) For the purpose of promoting health, safety, morals and general welfare, to alleviate traffic congestion, to facilitate the safe flow of traffic, to protect highways from the encroachment of advertising structures and buildings, to preserve the scenic beauty of Howard County and to promote the orderly growth of said County in the interest of all its inhabitants, the County Commissioners of Howard County are hereby empowered to designate, regulate and control Zoning Districts within the bounds of said County, regulate the use, height, area, bulk and type of construction of buildings and the use of land. Such regulations shall be made in accordance with a master or comprehensive plan.

(b) The County Commissioners of Howard County may designate within the County certain Districts of such number, shape and area as may be deemed best suited to carry out the purposes of this subtitle, and within such districts they may, by appropriate regulations, restrict, control, limit and regulate the erection, alteration, repair and use of buildings and the use of land and regulate and control the number of families which may be housed on any lot and in any building. All such regulations shall be uniform for each class or kind of building or structure or use throughout each District, but the regulations in one District may differ from those in other Districts. (1948, Sp. Sess., Ch. 19, Sec. 360; 1953, Ch. 604, Sec. 360.)

344. *Same; procedure, hearings, notice.*
(pp.28)
344.

(1) The County Commissioners shall determine the manner in which regulations and restrictions, and the boundaries of such Districts, shall be established and enforced, and from time to time amended, supplemented and changed. Before determining the boundaries of the proposed Districts and the regulations to be enforced therein, they shall hold a public hearing or hearings thereon, giving at least fifteen days' notice in a newspaper of general circulation throughout the County, of the place and time of the beginning of such hearing or hearings. The County Commissioners shall have power to amend, supplement or repeal the regulations or restrictions adopted by them, provided that before doing so they shall follow the same procedure with respect to notice and public hearings as is herein provided for the original regulations and restrictions.

(2) Notwithstanding the provisions of subsection (1) of this section, in any year in which County Commissioners are elected, the incumbent commissioners shall not take final

action on any zoning application after the date of the primary election as set by law and until the newly elected County Commissioners have qualified and taken office. If a County Charter shall be submitted to referendum pursuant to the provisions of Article XI-A of The Constitution of Maryland and shall be ratified by a majority of the voters, the incumbent County Commissioners shall not take final action on any zoning application after the date of such referendum election and until the County Governing body prescribed in such Charter shall have been elected and shall have qualified and taken office (Ch. 181, 1967).

* * * * * * * *

APPENDIX M.

Howard County Zoning Regulations.

Adopted May 16, 1961
First edition – 1948
Second edition – 1954
Third edition – 1961
Fourth edition – 1966

Resolution of the County Commissioners of Howard County, In the Matter of the Revision of the Comprehensive Zoning Plan of Howard County, as proposed by the Planning Commission of Howard County.

Case No. 289

* * * * * * *

Whereas, pursuant to Chapter 19 of the General Assembly of Maryland Extraordinary Session of 1948, as Amended by Chapter 604 of the Acts of 1953, a public hearing was held before the undersigned members of the Board of County Commissioners of Howard County on April 7, 1961 and continued on April 10, 1961; and

* * * * * * *

NOW, THEREFORE, BE IT ORDERED AND RESOLVED this 16th day of May, 1961 by the Board of County Commissioners of Howard County, that the following Zoning Regulations, and the map which is made part of the regulations, for Howard County be, and the same are hereby, adopted.

AND BE IT FURTHER ORDERED AND RESOLVED that the Zoning Regulations of Howard County and the Zoning Map of Howard County made part thereof, adopted January 12, 1954, and as amended to date, are hereby repealed.

* * * * * * *

(p. 1)

SECTION 1 – PURPOSE

The zoning regulations and districts as herein set forth are made in accordance with a comprehensive master plan for the purpose of promoting the health, safety, morals and general welfare of the community. They are designed to lessen congestion in streets, to secure safety from fire, panic and other dangers to provide adequate light and air, to prevent the overcrowding of land and buildings to avoid undue concentration of population, to prevent blight and property deterioration, to facilitate adequate provision for transportation, water, sewerage, schools, parks and other public requirements.

SECTION 2 – DISTRICTS ESTABLISHED

For the purpose set forth in Section 1 and considering, among other things:

(a) Traffic problems and their relation to the public safety and welfare.

(b) The physical layout of the County.

(c) The orderly growth of the County.

(d) The ability of the County to provide essential services.

(e) The most appropriate use of land.

(f) The conservation and stabilization of property values.

(g) The needs for adequate open spaces for light and air.

(h) The preservation of the scenic beauty of the County.

(i) The necessity of facilitating the provision of adequate community utilities and facilities such as transportation, fire-fighting equipment, water, sewerage, schools, parks and other public requirements.

(j) Population trends throughout the County and in particular areas within the County.

(k) The proximity of large urban centers to the County.

(l) The road building and road widening plans of the State and County.

(m) The needs of the County as a whole and the reasonable need of particular communities within the County.

(n) The character of each district and its peculiar suitability for particular uses.

(o) Such other matters considered relevant and pertinent to the establishment of a comprehensive zoning plan;

Howard County is hereby divided into the following Zoning Districts:

2.01	R-90	Residential, one and two family detached.
2.02	R-40	Residential, one and two family detached.
2.03	R-20	Residential, one and two family detached.
2.04	R-16	Residential, one and two family detached.
2.05	R-12	Residential, one family semi-detached.
2.06	R-A-1	Residential Garden Type Apartments.
2.07	R-A-2	Residential Apartments.
2.08	T-1	Tourist Accommodations–Motel.

(p. 2)

2.09	T-2	Tourist Accommodations–Trailer Park.
2.10	B-1	Business–Local.
2.11	B-2	Business–General.
2.12	S-C	Shopping Center.
2.13	M-R	Manufacturing Restricted.
2.14	M-1	Manufacturing Light.
2.15	M-2	Manufacturing Heavy.
2.16	NT	New Town.

(p. 70)

SECTION 3–DISTRICT MAPS

The zoning districts shall be of the number, size, and shape as shown on the zoning map of Howard County and said map with the necessary symbols, legends and dimensions, are hereby made a part of these regulations. As evidence of the authenticity of said map, it shall be signed by the Commissioners of Howard County upon the adoption of these regulations.

* * * * * * * *

SECTION 33–AMENDMENTS

33.01 These regulations, restrictions, and provisions and the boundaries of the districts may from time to time be amended, supplemented, changed, modified or repealed by the County Commissioners. However, no change or amendment shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. Before said hearing can be scheduled before the County Commissioners, a petition must be filed in the office of the Zoning Commissioner which will include, but not be limited to the following information:

33.011 A statement as to the present use or uses of the property.

33.012 A statement as to the present owner of the property, date of acquisition, name of previous owners.

33.013 A statement of the reason or reasons for the requested change in zoning.

33.014 A statement as to whether or not there is an allegation of mistake as to the current zoning, and if so, what is the nature of the mistake and facts to support allegations.

33.015 A statement as to whether or not there has been a change in the character of the neighborhood and if so, the nature of the change and facts to support the allegation and a statement as to why the petitioner concludes that the change sought is the proper one.

33.016 A statement of the intended use of the property in the event that it is rezoned.

(p. 71)

33.017 A statement of any other factors which the Petitioners desire the Board to consider in passing upon the petition.

33.018 A statement as to whether or not the property is served by public water and sewerage.

33.019 Drawings, in number required for proper processing and hearing of the petition, where a parcel of land, and/or building as defined in the Zoning Regulations, is involved in that which is petitioned for, drawn to scale and showing thereon:

33.019A Courses and distances of outline boundary lines and the area thereof;

33.019B North Arrow;

33.019C Existing zoning of subject property and adjoining property;

33.019D Location, extent, boundary lines and area of any proposed change in existing zoning and/or use;

33.019E Any existing or proposed building, structures, signs, streams, quarries, and other objects and/or uses on subject property which may be relevant to the petition;

33.019F Same as 33.019E above, if any, of adjoining property which may be required in the proper examination of petition;

33.019G Location of subject property in relation, by approximate dimension, to nearest inter-section of two public roads;

33.019H Ownership of effected roads;

33.019J Election District in which subject property is located;

33.019K Tax map and zoning map number on which subject property is located;

33.019L Name of local community in which subject property is located or is near;

33.019M Name and mailing address of property owner;

33.019N Name and mailing address of applicant (Petitioner);

33.019P Name and mailing address of attorney, if any;

33.019Q Any other information as may be necessary for full and proper consideration of the petition.

33.0110 After said hearing has been scheduled, at least 15 days notice of the time and place of such hearing shall be published in a newspaper of general circulation throughout the County, and if the proposed amendment involves a change in a zoning district boundary line, the property involved shall be posted, as directed by the County Commissioners, for a period of 15 successive days immediately preceding the hearing. Failure to comply with any of the requirements as stated above will cause the said petition to be rejected by the Board of County Commissioners.

33.02 The County Commissioners shall refer all proposed changes and amendments to these regulations or proposed changes in the zoning districts to the Planning Commission for report and recommendations.

(p. 72)

33.03 Before acting upon proposed changes and amendments to these regulations or changes in the zoning district boundary lines, the County Commissioners shall consider the following;

33.031 The purpose of these regulations as outlined in Section 1.

33.032 The matters considered in establishing the zoning districts as outlined in Section 2.

33.033 The report and recommendations of the Planning Commission.

33.034 Whether there have been any substantial changes in or near the area covered by a proposed change in the district boundary lines.

33.035 Any new phases of the Master Plan for Howard County developed since the adoption of these regulations.

33.04 The Planning Commission shall study zoning, its development, application and relation to public and private development and its relation to other phases of the Master Plan for the development and orderly growth of Howard County, and may, from time to time, submit amendments to these regulations or changes in the district zones lines to the Commissioners of Howard County. However, no such amendment or change shall become effective until approved by the County Commissioners as required by this Section.

33.05 If a petition for a change in a Zoning District boundary line is disapproved by the County Commissioners, thereafter the County Commissioners shall take no further action on another petition for the same or substantially the same proposal on the same premises until after eighteen months from the date of the last disapproval. Provided however, that a subsequent petition for the same or substantially the same proposal on the same premises may be filed at the expiration of six months of the date of the hearing last held if accompanied by an affidavit setting forth new and different grounds, which the petitioner believes would be sufficient for the approval of the proposal contained in the petition.

After having considered the said petition and the facts alleged in the accompanying, affidavit, the County Commissioners may, after the notice required herein, grant another hearing, provided it is satisfied that new and different grounds or conditions exist which would have a bearing on the consideration of said proposal and would justify another hearing.

* * * * * * * *

APPENDIX N.

Art. 41, § 244 ANNOTATED CODE OF MARYLAND

ADMINISTRATIVE PROCEDURE ACT

§ 244. Definitions.

For the purpose of this subtitle:

(a) *"Agency"* means any State board, commission, deparmtne or officer authorized by law to make rules or to adjudicate contested cases, except those in the legislative or judicial branches, and except the Department of Parole and Probation, the State Industrial Accident Commission, the State Insurance Department of Maryland, the Public Service Commission, the Employment Security Board and the State Tax Commission.

§ 251. Contested cases—Notice; hearing; records.

In any contested case, all parties shall be afforded an opportunity for hearing after reasonable notice. The notice shall state the time, place and issues involved, but if, by reason of the nature of the proceeding, the issues cannot be fully stated in advance of the hearing, or if subsequent amendment of the issues is necessary, they shall be fully stated as soon as practicable, and opportunity shall be afforded all parties to present evidence and argument with respect thereto. The agency shall prepare an offical record, which shall include testimony and exhibits, in each contested case, but it shall not be necessary to transcribe shorthand notes unless requested for purposes of rehearing or court review. Informal disposition may also be made of any contested case by stipulation, agreed settlement, consent

order, or default. Each agency shall adopt appropriate rules of procedure for notice and hearing in contested cases. (1957, ch. 94.)

§ 254. Same—Decisions and orders.

Every decision and order adverse to a party to the proceedings, rendered by an agency in a contested case, shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. A copy of the decision and order and accompanying findings and conclusions shall be delivered or mailed promptly to each party or to his attorney of record. (1957, ch. 94.)

MARYLAND RULES OF PROCEDURE

SUBTITLE B. ADMINISTRATIVE AGENCIES—APPEAL FROM

Rule B1. General Provisions.

a. *Actions to Which Applicable.*

This Subtitle shall apply to the review of any final action of an administrative agency by a court where such review is specially authorized by statute, regardless of the form of such review, except where review is by way of mandamus, in which case the rules relating to mandamus shall apply. An application for a review is hereinafter referred to as an appeal.

b. *Administrative Agency Defined.*

The term "administrative agency", as used in this Subtitle, shall mean any board, department, commission,

authority, commissioner or other officer of the State or of a county or local government, whether appointed or elected, whether legislative, administrative, executive, ministerial or quasi-judicial, whose action or decision is specifically subject to court review, except by way of mandamus, by any provision now or hereafter set forth in any general or local statute, ordinance or regulation now or hereafter in effect; but shall not mean any court created by Article IV of the Constitution of Maryland, People's Court, Trial Magistrate or Justice of the Peace.

Rule 825. Record–Time for Transmitting.

a. *Within Thirty Days.*

Within thirty days after the first order for appeal is filed or a writ of certiorari is granted unless a different time shall be fixed by order entered pursuant to sections b and c of this Rule, the clerk of the court having possession of the record shall transmit it to this Court.

c. *Court of Appeals May Shorten or Extend Time.*

Upon application of any party and for sufficient cause shown, or upon its own motion, this Court may direct that the record be transmitted within such shorter or longer period of time as may be ordered.

Rule 830. Filing of Briefs.

a. *Time for; Number.*

1. Appellant's Brief.

Within forty days after the filing of the record in this Court, appellant shall file with the Clerk forty copies of a printed brief conforming to the requirements of Rule 831.

b. *When Case Advanced.*

If a case is advanced by order of this Court pursuant to section c of Rule 845 (Assignment of Cases for Argument), such order shall fix the times within which the briefs of the respective parties shall be filed and exchanged.

Rule 8. Time—Computation.

In computing any period of time prescribed by these Rules, by rule or order of a court, or by any applicable statute, the day of the act, event, or default, after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless: (1) It is a Sunday or a legal holiday, in which event the period runs until the end of the next day, which is neither a Sunday nor a legal holiday; or, (2) the act to be done is the filing of some paper in court, and the office of the clerk of said court on said last day of the period is not open, or is closed for a part of a day in which event, the period runs until the end of the next day which is neither a Sunday, Saturday, a legal holiday, nor a day on which the said office is not open the entire day during ordinary business hours. When the period of time allowed is more than seven days, intermediate Sundays and legal holidays shall be considered as other days; . . .

Article 94.

Time.

§ 2. How computed.

In computing any period of time prescribed or allowed by any applicable statute, the day of the act, event, or default, after which the designated period of time begins to run is not

to be included. The last day of the period so computed is to be included unless: (1) It is a Sunday or a legal holiday, in which event the period runs until the end of the next day, which is neither a Sunday or a holiday; or, (2) the act to be done is the filing of some paper in court and the office of the clerk of said court on said last day of the period is not open, or is closed for a part of a day, in which event, the period runs until the end of the next day which is neither a Sunday, Saturday, a legal holiday, or a day on which the said office is not open the entire day during ordinary business hours. When the period of time allowed is more than seven days, intermediate Sundays and holidays shall be considered as other days; but if the period or time allowed is seven days or less, intermediate Sundays and holidays shall not be counted in computing the period of time.

SUPREME COURT, U. S.

FILED

SEP 24 1969

JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 512

LEIGH T. BOWIE, et al., *Petitioners,*

v.

BOARD OF COUNTY COMMISSIONERS OF HOWARD COUNTY, et al., *Respondents.*

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Statement

This is a zoning case that involves the rezoning from residential to industrial use of a tract of land in Howard County, Maryland. The land is near the New City of Columbia, Maryland, in the Baltimore-Washington corridor. The facts are fully stated in the opinions of the lower courts, and accordingly we here merely summarize the most salient aspects of the litigation.

The purpose of the rezoning was to permit General Electric Company to construct and operate a major facility that would employ some 12,000 persons. The interest of the corporate respondents in securing the establishment of that facility arose from their position as the developers of the New City of Columbia, Maryland, which is situated

near the area in question. Petitioners are three landowners who reside near the boundary of the tract.[1]

Under Maryland law, the rezoning could have been secured either on the standards applicable to what are termed floating zones or on the basis of a mistake in the original zoning or a significant change in the character of the area. The corporate respondents in their application made the necessary allegations both with respect to floating zones and with respect to change (Petition of the Howard Research and Development Corp., JOINT RECORD EXTRACT, p. 303, para. 9). At the hearing, evidence was introduced both with respect to floating zones and with respect to change and mistake (See opinion of the Court of Appeals, Pet. App. A, pp. 4-5; 11-12; 14; and see JOINT RECORD EXTRACT pp. 325, 376, 399-401). Petitioners appeared at the hearing, were represented by counsel, and testified (Pet. App B, pp. 21-22). The zoning board granted the application, finding that the rezoning would serve the public interest, would be compatible with the County's comprehensive plan of development, and would not adversely affect surrounding properties.

Petitioners appealed the determination to the Circuit Court. That court, at a preliminary conference, stated that it would hear any evidence that the parties wished to introduce, and gave the parties 25 days to assemble such evidence (Pet. App. A, p. 8; Pet. App. B, pp. 30-31). Petitioners, however, did not take advantage of that offer (Pet. App. B, pp. 30-31). The court thereupon issued its decision upholding the rezoning. The court held that the necessary requirements for establishment of a floating zone had not been met, but that the evidence did show that there had been both a mistake in the original zoning and a change in the character of the property (Pet. App. B, p. 28). Al-

[1] Petitioners did not introduce any expert evidence that the value of their property would be diminished by the rezoning and the Board of County Commissioners specifically found that the properties surrounding the tract would not be adversely affected (Pet. App. J, p. 79, para. (g)).

though the board had not explicitly made a determination respecting change, mistake, or floating zone, the court said that the board apparently had concluded that the floating zone requirements had been met; but the court relied on the principle that the reviewing court could affirm on any appropriate ground as long as that ground was supported by the record (Pet. App. B, pp. 25, 28).

On appeal, the Maryland Court of Appeals affirmed. In response to the contention that the Circuit Court had exceeded its jurisdiction in finding mistake and change, the Court of Appeals observed that the principle relied upon by the Circuit Court respecting review of zoning board determinations was firmly established by prior state court decisions. The Court of Appeals also noted that petitioners had had a full opportunity to introduce evidence respecting these issues both before the board and before the lower court, and that indeed they had assigned in the specifications of errors the alleged absence of evidence supporting findings of mistake and change. (Pet. App. A, p. 14).

Moreover, the Court of Appeals specifically adopted the view of the lower court respecting the strength of the evidence of change and mistake. As to mistake, the land had at the time of the original zoning been scarred by two large gravel operations and had been used hardly at all for residential dwellings (Pet. App. A, p. 12). As to change, the area was in the process of being laced with major highway arteries and rail trackage, and large related tracts had already been rezoned (Pet. App. A, p. 11).

On these facts, petitioners maintain that they have been deprived of due process of law within the meaning of the Fourteenth Amendment to the United States Constitution.

Argument

The petition should be denied because it raises no federal question of general importance. Indeed, it raises no substantial federal question at all.

1. Petitioners "ground" their petition "squarely on the principle embodied in *Saunders* v. *Shaw*," 244 U.S. 317. In so doing, they correctly identify the line of decisions relevant to their petition, but at the same time they betray the utter want of merit of their position. *Saunders* involved an attack on the application of a drainage tax to certain land. The landowners testified that their land would not be benefited by the drainage improvements. The trial court sustained the bondholder's objection to this evidence on the ground that benefit *vel non* was an irrelevant issue. The bondholder, relying on this ruling, did not offer certain evidence showing that the land would in fact be benefited. On appeal, the appellate court held the factual question to be relevant and decided the case, without remand, against the bondholder on the one-sided evidence in the record of no benefit. This Court held such action to be a denial of due process since the failure to remand, in view of the bondholder's proper reliance on the ruling of the trial court, resulted in the case being decided against the bondholder without his ever having had an opportunity to present his evidence.

Thus, *Saunders* stands squarely in the long line of decisions of this Court holding that, under the Fourteenth Amendment, persons engaged in adversary proceedings are entitled to notice and an opportunity to be heard. But until their petition in this Court petitioners did not suggest that the case raised a *Saunders* issue, and for very good reason: *Saunders* has nothing whatsoever to do with this case. As this Court pointed out in *Helis* v. *Ward*, 308 U.S. 365, 369, the mere fact that a higher reviewing authority decides a matter without remand on a theory different from that upon which the lower body acted does not, without more, bring the case within the *Saunders* rule. In the case at bar, as we have indicated, the initial rezoning application rested in part on allegations of change. Moreover, evidence respecting both change and mistake was intro-

duced at the hearing. Petitioners, represented by counsel, participated in the hearing; did not object to the introduction of that evidence; and did not introduce counter-evidence. No ruling was made that could in any way have led petitioners to believe they could refrain from putting in any evidence they might have had as to change and mistake. Petitioners then raised in Circuit Court the question of the weight of the evidence respecting change and mistake, but did not offer any evidence of their own even when given 25 days by the court to prepare such evidence. Having been afforded not one, but two chances to adduce evidence respecting the issues of change and mistake, petitioners surely are in no position to claim that the Fourteenth Amendment entitles them to yet a third chance.

2. Petitioners also complain about the Maryland procedure under which, as they put it, on review of a zoning board determination the "reviewing Court supplies the findings and conclusions to uphold the Board's Order and affirms without remand to the Board . . ." (Pet. p. 2). But that complaint, too, founders upon the fact that petitioners were not in any way deprived of the opportunity to make their case. It is established that the Fourteenth Amendment does not require that the states establish any particular form of proceeding, as long as they provide a proceeding that secures to the parties the essential right to be heard. *Insurance Co.* v. *Glidden Co.*, 284 U.S. 151, 158; *Holmes* v. *Conway*, 241 U.S. 624, 631-34; *Louisville & Nashville R.R.* v. *Schmidt*, 177 U.S. 230. In this case that right was fully afforded, as we have indicated, not only at the administrative level but also at the judicial review level.[2]

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[2] *Cf.* this Court's decisions indicating that a state need not even provide a right of appeal if fair procedures are brought into play at the initial hearing level. *Dohany* v. *Rogers*, 281 U.S. 362, 369; *Ohio* v. *Akron Park District*, 281 U.S. 74, 80; *Reetz* v. *Michigan*, 188 U.S. 505; *District of Columbia* v. *Clawans*, 300 U.S. 617, 627; *Griffin* v. *Illinois*, 351 U.S. 12, 18.

In such circumstances, the state is entitled to prescribe standards for judicial review under which the decisions of the zoning boards are not to be disturbed unless unsupportable on any ground sustained by the facts. Such an approach to judicial review, it may be noted, is particularly appropriate where under state law the reviewing court is empowered to take evidence [3] and where the issue relates to zoning classifications, which are basically legislative in character [4] and as to which this Court has said:

> ". . . If the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control." *Euclid* v. *Ambler Co.*, 272 U.S. 365, 388.

3. Petitioners suggest that they were given too speedy a trial (Pet. pp. 16-17). As the Court of Appeals observed, delay was doubtless to petitioners' advantage, but they were given wholly adequate notice (Pet. App. A, pp. 14-15). In that connection, petitioners say that they did not, by one day, get the 15 days notice of the zoning board hearing required by state law (Pet. p. 11). But—assuming contrary to fact that such a breach of state law would also breach the Fourteenth Amendment—petitioners did in fact get proper notice, as both the Court of Appeals and the Circuit Court said (Pet. App. A, pp. 3-4; Pet. App. B, p. 30).

4. Petitioners assert that the Board did not follow its own regulations (Pet. p. 15). We are unable to tell from the petition exactly what default is charged in that regard. The Board fully complied with its regulations. Moreover, petitioners do not assert any prejudice. In any event, this

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[3] As to this authority of the court, in addition to the case at bar see *Mayor and City Council of Baltimore* v. *Shapiro*, 187 Md. 593, 51 A.2d 269 (1947).

[4] See *Hyson* v. *Montgomery County Council*, 242 Md. 55, 217 A.2d 578, 583 (1966), and cases there cited.

issue was not raised in the Circuit Court (See Bill of Complaint, JOINT RECORD EXTRACT pp. 2-6), and accordingly was one of many peripheral matters that the Court of Appeals did not feel obliged to consider (Pet. App. A, pp. 16-17).

5. Finally, petitioners suggest without specification that the provision establishing the procedure under which the zoning application was filed, Section 14A, was itself unconstitutional (Pet. p. 14). That claim was made for the first time in the Court of Appeals, which therefore refused to consider it. Accordingly, it is not properly before this Court.

Conclusion

This is simply a zoning case. The decision turned on the particular facts of the case and on the application of state law. No federal question is before this Court—substantial or otherwise. Petitioners merely want this Court to act as an additional appellate court so that they may have yet a third judicial review of a county rezoning action.

The writ should not issue.

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